

No. 12501

United States
Court of Appeals
For the Ninth Circuit.

MEYER SCHNEIDER,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Appeal from the United States District Court,
for the District of Montana.

FILED

AUG 4 1950

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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Attorneys for the Defendant.

In the United States District Court for the District
Of Montana, Great Falls Division

No. 8088

UNITED STATES OF AMERICA,
Plaintiff,

vs.

MEYER SCHNEIDER,
Defendant.

INDICTMENT

The Grand Jury Charges:

Count One

(Offer of Bribe)

(18-201)

That on or about the 22nd day of November, 1948, in the state and district of Montana and within the jurisdiction of this Court, Meyer Schneider unlawfully and feloniously promised money to a certain officer and person acting for and on behalf of the United States in an official function, to-wit: Harvey B. Apperson, First Lieutenant, United States Air Force and Base Salvage Officer of the Great Falls United States Air Force Base, as the defendant well knew, for the purpose and with the intent to influence the decision and action of the said Harvey B. Apperson in his official capacity and function, as aforesaid, on a certain matter then pending before him in his official capacity,

as the defendant well knew, and for the purpose and with the intent to influence the said Harvey B. Apperson, as aforesaid, to allow and make opportunity for the commission of a fraud on the United States and to induce the said Harvey B. Apperson acting as aforesaid, as the defendant well knew, to do an act in violation of his lawful duty, as the defendant well knew, in respect to the disposal of salvage property of the United States, as aforesaid.

Count Two

(Bribery)

(18-201)

That on or about the 23rd day of November, 1948, in the state and district of Montana and within the jurisdiction of this Court, Meyer Schneider unlawfully and feloniously did give a sum of money, to-wit: One Thousand Five Hundred (\$1500.00) Dollars, to a certain officer and person acting for and on behalf of the United States in an official function, to-wit: Harvey B. Apperson, First Lieutenant, United States Air Force and Base Salvage Officer of the Great Falls United States Air Force Base, as the defendant well knew, for the purpose and with the intent to influence the decision and action of the said Harvey B. Apperson in his official capacity and function, as aforesaid, on a certain matter then pending before him in his official capacity, as the defendant well knew, and for the purpose and with the intent to influ-

ence the said Harvey B. Apperson, as aforesaid, to allow and make opportunity for the commission of a fraud on the United States and to induce the said Harvey B. Apperson acting as aforesaid, as the defendant well knew, to do an act in violation of his lawful duty, as the defendant well knew, in respect to the disposal of salvage property of the United States, as aforesaid.

A True Bill.

H. R. SCHUYLER,

Foreman.

HARLOW PEASE,

Acting United States Attorney.

[Endorsed]: Filed June 9, 1949.

[Title of District Court and Cause.]

MOTION TO DISMISS INDICTMENT

The defendant moves that the indictment brought against him be dismissed upon the ground:

I.

1. That the Indictment does not state facts sufficient to constitute an offense against the United States.

2. For the reason that said Indictment is defective in that it charges in each count of said Indictment that the defendant unlawfully and feloniously

promised or gave money to a certain officer and person acting for and in behalf of the United States in an official function, it charges that Harvey B. Apperson was an officer and person acting for and in behalf of the United States in an official capacity and function, but in neither count of said Indictment does it describe the duties or official function of the said Apperson as an officer or as a person the defendant sought to bribe or did bribe.

3. That the said Indictment charges but one offense in two counts, and that the facts alleged in count One of said Indictment comprise a part and portion of the substantive offense charged in count Two of said Indictment.

4. That said Indictment is too vague, indefinite and uncertain as to the facts charged and the particular circumstances of the facts charged to apprise and inform this defendant of the nature of the acts alleged to have been done by him constituting the offense charged, either as to count One or count Two, of said Indictment.

II.

That the defendant separately moves that count One of the said Indictment be dismissed upon the following ground:

1. That count One of said Indictment does not state facts sufficient to constitute an offense against the United States.

2. That the Grand Jury in said count One charges the defendant with offering to bribe and then alleges promising money to a certain officer and person, which constitutes a fatal variance between the crime charged and the facts alleged to constitute a commission thereof.

3. That the defendant is not apprised by said count One whether it will be sought to prove that he promised money to an officer or person with intent to influence the decision of such officer or person acting as an officer in behalf of the United States in an official function, or whether he offered money to an officer or person acting as a person in an official function in behalf of the United States.

4. That the defendant is not apprised and informed by said count One in respect to what particular official functions or duties, in behalf of the United States, the person or officer to whom it is alleged money was promised to influence the decision and action upon, and in what respect the decision and action of said person or officer was intended to be influenced by the promise of money on the part of the defendant.

5. That count One of said Indictment does not apprise the defendant of the nature of the lawful duty of the said officer and person in regard to which it is alleged defendant sought to induce said officer and person to do an unlawful act and the nature of the unlawful act which it will be sought

to prove he attempted to induce the officer and person to do.

6. That said Indictment is too vague, indefinite and uncertain as to the facts charged and the particular circumstances of the facts charge to apprise this defendant of the nature of the acts alleged to have been done by him constituting the offense charged as to count One of said Indictment.

III.

That the defendant further separately moves that count Two of said Indictment be dismissed on the following ground:

1. That count Two of said Indictment does not state facts sufficient to constitute an offense against the United States.

2. That the defendant is not apprised and informed by said count. Two in respect to what particular official functions or duties, in behalf of the United States, the person or officer to whom it is alleged money was given to influence the decision and action upon, and in what respect the decision and action of said person or officer was intended to be influenced by the gift of money on the part of the defendant.

3. That count Two of said Indictment does not apprise the defendant of the nature of the lawful duty of the said officer and operson in regard to which it is alleged defendant sought to induce said officer or person to do an unlawful act and the

nature of the unlawful act which it will be sought to prove he attempted to induce the officer or person to do.

Dated this 10th day of December, 1949.

/s/ H. R. EICKEMEYER,

/s/ L. M. LEIBOWITZ,

/s/ J. F. EMIGH,

Attorneys for Defendant.

Receipt of copy acknowledged.

[Endorsed]: Filed December 12, 1949.

MINUTE ORDER ENTERED
DECEMBER 12, 1949.

Defendant was duly called for arraignment, plea and trial this day, said defendant being personally present in Court with his attorney, Mr. H. R. Eickemeyer, and Messrs. Franklin A. Lamb and Emmett C. Angland, Assistants to the United States Attorney, being present and appearing for the United States.

Thereupon, on motion of Mr. Eickemeyer, Court ordered that Mr. Louis M. Leibowitz of New York City, N. Y., be admitted to practice for the purposes of this case, and that his name, and the name of Mr. J. F. Emigh of Butte, Montana, be entered as associate counsel for defendant.

Thereupon counsel for defendant filed and pres-

ented to the Court a motion to dismiss the indictment herein, and a memo of authorities in support of the motion, whereupon Mr. Lamb asked that the record show that the motion to dismiss was served on the United States Attorney at 9:50 a.m., and the memo of authorities was served at 9:57 a.m. on the day set for the arraignment, plea and trial of the defendant, and that acceptance of service of said motion and memo is done without waiver of any right that the government may have.

Thereupon Court ordered that the jury be excused from the Court room while the motion to dismiss is heard, whereupon, in the absence of the jury, said motion to dismiss was duly argued by counsel and submitted. Thereupon, after due consideration, Court ordered that said motion to dismiss the indictment be and is overruled, to which ruling of the Court the defendant excepted and exception duly noted.

Thereupon the defendant was duly arraigned and answered that his true name is Meyer Schneider. Thereupon the defendant waived the reading of the indictment and entered a plea of not guilty.

Thereupon the impanelling of a jury was proceeded with, whereupon further trial of the cause was ordered continued until 10:00 a.m. tomorrow and all jurors now in attendance were duly admonished by the Court and excused until that time.

Entered in open Court at Great Falls, December 12, 1949.

H. H. WALKER,
Clerk.

[Title of District Court and Cause.]

MOTION FOR JUDGMENT
OF ACQUITTAL

Come Now the defendant, Meyer Schneider, and upon the close of the testimony in behalf of plaintiff, moves that this Honorable Court order and instruct the jury to forthwith return a verdict of not guilty as to Count One of the Indictment upon the grounds that:

1. There is not sufficient evidence to warrant his conviction or to establish a prima facie case in behalf of plaintiff:

2. That there is not sufficient evidence to establish beyond a reasonable doubt that this defendant committed the acts charged in Count One of the Indictment.

3. That it affirmatively appears from the evidence herein that the Officers of the United States induced, enticed, persuaded and by representation lured the defendant to commit the acts charged in Count One of the Indictment in order to entrap, arrest and prosecute him therefor.

And defendant further moves this Court to order and instruct the Jury to forthwith return a verdict of not guilty as to Count Two of the Indictment upon the grounds that:

1. There is not sufficient evidence to warrant his

conviction or to establish a prima facie case in behalf of plaintiff.

2. There is not sufficient evidence to establish beyond a reasonable doubt that this defendant committed the acts charged in Count Two of the Indictment.

Dated this day of December, 1949.

/s/ J. F. EMIGH,

Attorneys for Defendant.

[Endorsed]: Filed December 15, 1949.

[Title of District Court and Cause.]

MOTION FOR JUDGMENT
OF ACQUITTAL

Comes Now the defendant above named, Meyer Schneider, and upon the close of testimony in behalf of the plaintiff and defendant and upon both parties, plaintiff and defendant, having rested, moves that this Honorable Court order and instruct the Jury to forthwith return a verdict of not guilty as to count One of the Indictment, upon the ground and for the reason:

1. That said Indictment does not state facts sufficient to constitute the crime charged in count One of said Indictment, or any other count.

2. That there is not sufficient evidence to war-

rant his conviction or to establish a prima facie case in behalf of plaintiff.

3. That there is not sufficient evidence to establish beyond a reasonable doubt that this defendant committed the acts charged in count One of the Indictment.

4. That it affirmatively appears from the evidence herein that the officers of the United States induced, enticed, persuaded and by representation lured the defendant to commit the acts charged in count One of the Indictment in order to entrap, arrest and prosecute him therefor.

5. That no evidence has been introduced whatsoever establishing the functions or duties of Harvey B. Apperson acting as a person.

6. That the evidence fails to prove and establish any authority on the part of Harvey B. Apperson acting as a person or officer to consummate or do the things and matters which the evidence discloses it is claimed defendant sought to influence or induce the said Harvey B. Apperson to do.

7. That there is a fatal variance between the allegations of count One of the Indictment and the evidence introduced by the Government in this, to wit: That there is no legal evidence establishing Harvey B. Apperson to be a "Base Salvage Officer of the Great Falls United States Air Force Base."

8. That there is a fatal variance between the charge in the Indictment and the proof in that the

first count of the Indictment charges the person sought to be influenced in an official function and capacity is "Harvey B. Apperson, First Lieutenant, United States Air Force and Base Salvage Officer of the Great Falls United States Air Force Base;" whereas the only competent proof tending to establish the official capacity and official function of the person to whom the evidence tended to show an offer of bribe or a bribe was made to influence in an official function or capacity was one First Lt. Harvey D. Apperson, Jr., or Harvey O. Apperson, Jr., Salvage and Property Disposal Officer.

And defendant further moves this Court to order and instruct the Jury to forthwith return a verdict of not guilty as to count Two of the Indictment, upon the ground and for the reason:

1. That said Indictment does not state facts sufficient to constitute a crime charged in count Two of said Indictment, or any other count.

2. That there is not sufficient evidence to warrant his conviction or to establish a prima facie case in behalf of plaintiff.

3. That there is not sufficient evidence to establish beyond a reasonable doubt that this defendant committed the acts charged in count Two of the Indictment.

4. That is affirmatively appears from the evidence herein that the officers of the United States

induced, enticed, persuaded and by representation lured the defendant to commit the acts charged in count Two of the Indictment in order to entrap, arrest and prosecute him therefor.

5. That no evidence has been introduced whatsoever establishing the functions or duties of Harvey B. Apperson acting as a person.

6. That the evidence fails to prove and establish any authority on the part of Harvey B. Apperson acting as a person or officer to consummate or to do the things and matters which the evidence discloses it is claimed defendant sought to influence or induce the said Harvey B. Apperson to do.

7. That there is a fatal variance between the allegations of count Two of the Indictment and the evidence introduced by the Government in this, to wit: That there is no legal evidence establishing Harvey B. Apperson to be a "Base Salvage Officer of the Great Falls United States Air Force Base."

8. That there is a fatal variance between the charge in the Indictment and the proof in that the second count of the Indictment charges the person sought to be influenced in an official function and capacity is "Harvey B. Apperson, First Lieutenant, United States Air Force and Base Salvage Officer of the Great Falls United States Air Force Base;" whereas the only competent proof tending to establish the official capacity and official function of the person to whom the evidence tended to show an offer of bribe or a bribe was made to in-

fluence in an official function or capacity was one 1st Lt. Harvey D. Apperson, Jr., or Harvey O. Apperson, Jr., Salvage and Property Disposal Officer.

Dated this 15th day of December, 1949.

H. R. EICKEMEYER,
LOUIS M. LEIBOWITZ,
J. F. EMIGH,
Attorneys for Defendant.

Endorsed]: Filed December 15, 1949.

[Title of District Court and Cause.]

**MOTION FOR WITHDRAWAL OF COUNT
ONE FROM THE CONSIDERATION OF
JURY**

Comes now the above named defendant, Meyer Schneider, and at the close of the case by both plaintiff and defendant, moves this Honorable Court to withddraw from the consideration of the Jury count One of the Indictment herein on the grounds and for the reason:

1. That is now affirmatively appears from the evidence of the Government and defendant herein that the facts charged and alleged in count One of the said Indictment do not constitute a separate and distinct crime from the matters, facts and things charged in count Two of the Indictment, but

in fact and law constitute a part and portion of the same transaction charged and not a separate and distinct offense;

2. That the matters and facts charged in count One of the Indictment constitute a part and portion of the transaction charged in count Two of the Indictment, to wit, the offense of bribery, and that the acts charged in count One of the Indictment now affirmatively appear from the evidence as a matter of fact and law are merged in the offense charged in count Two of the Indictment;

3. That the evidence now affirmatively discloses that the offense, if any, charged in count One of the Indictment as now disclosed by the evidence constitutes merely a portion of a greater and consummated offense, namely, the offense charged in count Two of the Indictment.

/s/ H. R. EICKEMEYER,

/s/ LOUIS LEIBOWITZ,

/s/ J. F. EMIGH,

Attorneys for Defendant.

[Endorsed]: Filed December 15, 1949.

MINUTE ORDER ENTERED
DECEMBER 15, 1949

Defendant and counsel for respective parties, with the jury, present as before and trial of cause resumed.

Thereupon counsel for defendant filed and presented to the Court a motion for judgment of acquittal, whereupon Court ordered that the jury retire from the court room while said motion is heard. Thereupon, in the absence of the jury, said motion was duly argued by counsel, submitted and by the Court taken under advisement. Thereafter, the Court after due consideration, ordered that said motion for judgment of acquittal be and is denied, to which ruling of the Court the defendant excepted and exception duly noted.

Thereupon the defendant announced that he will offer no evidence and that the defense rests, whereupon the evidence closed.

Thereupon counsel for defendant filed and presented to the Court a second motion for judgment of acquittal containing some additional matter to that contained in the first motion filed, which motion was submitted without argument and by the Court denied, to which ruling of the Court defendant excepted and exception duly noted.

Thereupon counsel for defendant filed and presented to the Court a motion for withdrawal of Count One from the Consideration of the jury, which motion was submitted without argument and by the Court denied, to which ruling of the Court

the defendant excepted and exception duly noted.

Entered in open Court December 15, 1949.

H. H. WALKER,
Clerk.

District Court of the United States, District of
Montana, Great Falls Division

No. 8088

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MEYER SCHNEIDER,

Defendant.

VERDICT

We, the jury in the above-entitled cause, find the defendant guilty in manner and form as charged in the Indictment on file herein.

CLAUDE K. DUNCAN,
Foreman.

[Endorsed]: Filed December 15, 1949.

In the District Court of the United States in and
For the District of Montana, Great Falls Division

No. 8088, Criminal

UNITED STATES OF AMERICA,

vs.

MEYER SCHNEIDER.

JUDGMENT AND COMMITMENT

(Indictment in two counts, for violation of U.S.C.
Title 18, Sec. 201.)

On this 15th day of December, 1949, came the United States Attorney, and the defendant appearing in proper person and by his counsel, Mr. H. R. Eickemeyer, Mr. J. F. Emigh and Mr. Louis M. Leibowitz.

And the defendant having been convicted on the verdict of the jury of the offenses charged in the Indictment in the above entitled cause, to-wit: that on or about the 22nd day of November, 1948, in the state and district of Montana and within the jurisdiction of this Court, Meyer Schneider unlawfully and feloniously promised money to a certain officer and person acting for and on behalf of the United States in an official function, to wit: Harvey B. Apperson, First Lieutenant, United States Air Force and Base Salvage Officer of the Great Falls United States Air Force Base, as the defendant well knew, for the purpose and with the intent to influence the decision and action of the said Har-

vey B. Apperson in his official capacity and function, as aforesaid, on a certain matter then pending before him in his official capacity, as the defendant well knew, and for the purpose and with the intent to influence the said Harvey B. Apperson, as aforesaid, to allow and make opportunity for the commission of a fraud on the United States and to induce the said Harvey B. Apperson acting as aforesaid, as the defendant well knew, to do an act in violation of his lawful duty, as the defendant well knew, in respect to the disposal of salvage property of the United States, as aforesaid, as charged in Count One of the Indictment herein, and that on or about the 23rd day of November, 1948, in the state and district of Montana and within the jurisdiction of this Court, Meyer Schneider unlawfully and feloniously did give a sum of money, to-wit: One Thousand Five Hundred (\$1500.00) Dollars, to a certain officer and person acting for and on behalf of the United States in an official function, to-wit: Harvey B. Apperson, First Lieutenant, United States Air Force and Base Salvage Officer of the Great Falls United States Air Force Base, as the defendant well knew, for the purpose and with the intent to influence the decision and action of the said Harvey B. Apperson in his official capacity and function, as aforesaid, on a certain matter then pending before him in his official capacity, as the defendant well knew, and for the purpose and with the intent to influence the said Harvey B. Apperson, as aforesaid, to allow and make opportunity for the com-

mission of a fraud on the United States and to induce the said Harvey B. Apperson acting as aforesaid, as the defendant well knew, to do an act in violation of his lawful duty, as the defendant well knew, in respect to the disposal of salvage property of the United States, as aforesaid, as charged in Count Two of the Indictment herein.

And the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is by the Court Ordered and Adjudged that the said defendant, having been found guilty of said offense, be committed to the custody of the Attorney General of the United States, or his authorized representative, for imprisonment for the term of One Year and Six Months, and that he pay a fine in three times the sum of \$1500.00, the amount involved herein, being the sum of \$4500.00, and that said defendant be further imprisoned until payment of said fine or until said defendant be otherwise discharged as provided by law.

It is further ordered that the Clerk deliver a certified copy of this Judgment and Commitment to the United States Marshal or other qualified officer and that the same shall serve as the Commitment herein.

CHARLES N. PRAY,
Judge.

[Endorsed]: Filed and entered December 15, 1949.

CERTIFICATE OF CLERK

United States of America,
District of Montana—ss.

I. H. H. Walker, Clerk of the United States District Court for the District of Montana, do hereby Certify that the foregoing papers hereto annexed constitute the Judgment Roll in the above-entitled action.

Witness my hand and seal of said Court this
15th day of December, 1949.

H. H. WALKER,
Clerk.

[Seal] By ELIZABETH C. McKEE,
Deputy.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and Address of Appellant: Meyer Schneider, 369 Cherry Street, New York City, New York.

Names and Addresses of Appellant's Attorneys: H. R. Eickemeyer, 429 Ford Building, Great Falls, Montana; Louis M. Leibowitz, 401 Broadway, New York City, New York; J. F. Emigh, 47 North Main, Butte, Montana.

Offenses: Count One: Offer of Bribe, violation of Title 18, Section 201, United States Codes Annotated;

Count Two: Bribery, violation of Title 18, Section 201, United States Codes Annotated;

Concise Statement of Judgment: Judgment of Conviction December 15, 1949;

Sentence: Judgment on two counts combined, fined in the sum of Four Thousand Five Hundred Dollars (\$4500.00), imprisonment for one (1) year and six (6) months.

Order of Court Denying New Trial: December 16th, 1949;

Order of Court Denying Motion in Arrest of Judgment, December 16th, 1949;

Name of Institution Where Now Confined if Not on Bail: On bail;

I, the above named Appellant, hereby appeal to the United States Court of Appeals, Ninth Circuit, from the above named judgment.

Dated this 16th day of December, 1949.

H. R. EICKEMEYER,
LOUIS M. LEIBOWITZ,
J. F. EMIGH,
Attorney for Defendant.

Receipt of copy acknowledged.

[Endorsed]: Filed December 16, 1949.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

United States of America,
District of Montana—ss.

I, H. H. Walker, Clerk of the United States District Court for the District of Montana, do hereby certify that the annexed and foregoing constitutes a full, true and correct copy of the Judgment Roll, and of the Notice of Appeal, filed in Criminal Case Number 8088, United States of America vs. Meyer Schneider, as appears from the original files and records of said case in said Court and now remaining in my custody as such Clerk.

Witness my hand and the seal of said Court at Great Falls, Montana, this 15th day of March, A. D. 1950.

H. H. WALKER,
Clerk as aforesaid,

[Seal] /s/ By C. G. KEGEL,
Deputy Clerk.

In the District Court of the United States, in and
for the District of Montana, Great Falls Division

Criminal Action No. 8088

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MEYER SCHNEIDER,

Defendant.

Before: Honorable Charles N. Pray, United States
District Judge, with a jury, at Great Falls,
Montana, on December 12, 13, 14, and 15th,
1949.

APPEARANCES

MR. FRANKLIN A. LAMB,
Assistant United States Attorney,
Billings, Montana,

MR. EMMETT C. ANGLAND,
Assistant United States Attorney,
Great Falls, Montana,
For Plaintiff.

MR. H. R. EICKEMEYER,
Great Falls, Montana,

MR. J. F. EMIGH,
Butte, Montana,

MR. LOUIS M. LEIBOWITZ,
401 Broadway,
New York, N. Y.,
For Defendant.

PROCEEDINGS

Be It Remembered, that the above entitled cause came on regularly for trial in the United States District Court in and for the District of Montana, Great Falls, Montana, on December 12, 13, 14, and 15th, 1949, before the Honorable Charles N. Pray, United States District Judge, sitting with a jury, at which time the following proceedings were had and done, to wit:

The Court: Gentlemen, have you any ex parte matters this morning?

Mr. Lamb: I have none, your Honor.

Mr. Angland: None, your Honor.

The Clerk: Well we will go to the case on trial on the calendar. The Clerk will call the case.

The Clerk: United States vs. Meyer Schneider.

Mr. Eickemeyer: If the court please, the defendant, Meyer Schneider, is in the court room, and I would like to have the record show that H. R. Eickemeyer of Great Falls, J. F. Emigh of Butte, and Louis M. Leibowitz of New York City, are the attorneys for the defendant. Mr. Leibowitz is a member of the Bar of the State of New York and I would like to have him admitted for the purposes of this case.

The Court: The record will show his admission.

Mr. Eickemeyer: At this time we wish to make and file a motion to dismiss the indictment, and I have here, which this motion has been served on the District Attorney, and I [2*] also wish to hand

* Page numbering appearing at bottom of page of original Reporter's Transcript.

the court a memorandum of authorities which we have so that you can follow Mr. Emigh, who will make the argument, and you can follow the argument.

Mr. Lamb: At this time we would like to have the record show the motion to dismiss now filed with the Clerk was served on the United States Attorney at ten minutes to ten on the morning of the time set for the plea and arraignment and trial of the defendant, and the memorandum of authorities was served at three minutes to ten on that same day, and that the acceptance of service was done without waiver of any rights on behalf of the United States of America because of the shortness of time.

The Court: I think probably we had better let the jury retire to the Clerk's office or Marshal's office and remain there within call while we are discussing these propositions of law. Some reference might be made to facts. You may retire, ladies and gentlemen jurors to the Clerk's office or the Marshal's office in charge of the Marshal.

(Whereupon the jurors left the court room.)

The Court: I suppose, Mr. Emigh, you can cover your memorandum so it won't be necessary to dwell upon it as anticipated in a motion to dismiss. I have given some attention to this question myself and I think I found similar cases Saturday when you talked to me about it.

Mr. Emigh: Yes. [3]

The Court: I have also been examining some

of the same authorities you have. So you may proceed, Mr. Emigh, with your argument.

Mr. Emigh: May it please the Court, before addressing the Court on this matter I want to express the appreciation of counsel and the defendant for the courtesy the Court in continuing the arraignment until this day, and the tolerance of the Court in hearing this motion at this time. I think the Court has been very courteous to us in the matter, and I also wish to thank Government counsel for their courtesy. Now, your Honor, I am going to read with the permission of the Court our motion, the motion I am addressing the Court in regard to and attempt to take up in the best order the different elements which go into the merits of that motion.

(Mr. Emigh orally argued the motion.)

(Mr. Lamb orally argued in behalf of the plaintiff.)

(Mr. Leibowitz orally argued on the motion.)

(Mr. Eickemeyer argued the matter orally.)

(Mr. Lamb argued further.)

The Court: Well, gentlemen, of course, the court and the District Attorney very likely anticipated that you would come in here the last moment and serve copies of your motions and your authorities on the other side, so in the meantime the court has given some attention to this indictment, knowing what happened to the first one, and has tried to cover the [4] ground pretty thoroughly, and has examined the authorities, or most of them

that you gentlemen have cited, and tried to read them very carefully; and I finally came to this conclusion: That the only thing about this indictment I ought I ought to give particular attention was the question of the description of the duties and something with reference to the act performed, the act itself. Well I found authorities citing something like this: An indictment which charges a person with offering a bribe to an officer to influence his official action concerning the sale of certain government property is sufficient, although it fails to allege that this property in question was owned by the Government. The particular act involved and the special duties of the officer in question need not be set forth. Now I found some very good authorities for that I thought. One of the cases which you may have cited in your memorandum here was *United States vs. Boykin* 11 Fed. 2 484, but I didn't find very much encouragement in that in support of your position. Now those were the particular matters that impressed me. And after going over this indictment as carefully as I could and looking up different authorities in connection with the allegations here, I then came to the conclusion that the only question remaining that I must consider and solve as best I could relating to the particular act influence and the specific duties of the officer. In my judgment the only merit to your [5] contentions is involved there, and on investigating that situation the best I could

I have come to the conclusion that this indictment is good and states a charge of a public offense against the defendant. So without taking any more time on the matter I am going to overrule the motion. You may call in the jury.

Mr. Emigh: May the record show an exception on behalf of the defendant?

The Court: Very well.

(Whereupon the jurors returned to the court room.)

The Court: Are you ready to proceed, gentlemen?

Mr. Lamb: The Government is ready.

Mr. Eickemeyer: Yes, your Honor.

The Court: Call the jury.

Mr. Eickemeyer: If the court please, I imagine we had better plead before we draw the jury.

The Court: I think we had better. Let the defendant come forward. The court in allowing so much laxity——

Mr. Eickemeyer: If the court please, we represent the defendant and we waive the reading of the indictment and enter a plea of not guilty. And his true name is Meyer Schneider as set forth in the indictment.

The Court: All right.

(Whereupon the prospective jurors were called and duly sworn.) [6]

Whereupon Mr. Lamb made the opening statement of the case to the jury.

Mr. Lamb proceeded to examine the prospective jurors.

Mr. Eickemeyer proceeded to examine the prospective jurors.

The Court: We will suspend here, Mr. Eickemeyer.

(12:00 noon.)

(Whereupon the court admonished the jurors.)

The Court: Court is in recess until 2:00 o'clock.

Court resumed, pursuant to recess, at 2:00 o'clock p.m., on December 12, 1949, at which time the jury, defendant, and all counsel were present.

The Court: Proceed.

(Whereupon Mr. Eickemeyer proceeded to examine the prospective jurors.)

(Excerpt of examination of Mr. Gabriel.)

Q. (By Mr. Eickemeyer): If it should develop that Mr. Apperson should be a very material witness in this case and that you will have to pass upon the credibility of his testimony would that embarrass you to the extent you would rather be off this case?

A. Well, I don't know just how to answer that.

Q. What is that?

A. I don't know just how to answer that. I rather admired Apperson for not taking this so-called bribe at the time I read about it.

Mr. Eickemeyer: Well, if the court please, I think those remarks should be stricken from the records.

The Court: Yes, they may be off the record; they are not responsive.

Mr. Eickemeyer: And the court should make a statement the jury should not take into consideration those remarks.

The Court: Yes. The jury will disregard the remarks.

Mr. Eickemeyer: I think, if the court please, that the juror isn't in a position to act in this case. I think we have to challenge him for cause.

Mr. Lamb: We will not resist, your Honor, if that is their wish.

The Court: Very well, the juror may be excused. Call another juror.

The Clerk: C. M. Gibbons.

Mr. Leibowitz: Your Honor, may I be permitted to make a statement with reference to the last witness, last juror. If I am permitted to make it?

The Court: Make a statement in reference to him?

Mr. Leibowitz: Yes. [8]

The Court: It depends on what the statement is. What is it about?

Mr. Leibowitz: I think the gratuitous statement made by the last juror is very prejudicial to the defendant and I think under those circumstances that the panel should be stricken out and a new one called.

The Court: That—oh, no.

Mr. Leibowitz: Your Honor, that motion is denied?

The Court: Yes.

Mr. Leibowitz: May I have an exception to it.

The Court: Yes.

The Court: The jury, of course, will understand whoever heard that remark it is no part of the evidence in this case at all and is not to be considered by them in any respect whatsoever. It was a voluntary contribution on the part of the prospective juror, Gabriel; it is not to be thought of or considered by you at all. Now, of course, on any of the others that may be called here as jurors that are sitting in the back of the room and heard the remark this applies to; it is out of the record entirely. You may proceed.

(Whereupon examination of prospective jurors was resumed by Mr. Lamb and Mr. Eickemeyer.

The Court: Well, you apparently won't be able to get a jury tonight. I think when we get this jury we will [9] also get one or two alternate jurors so if anything does happen this work won't be for nothing.

Whereupon the court admonished the jurors.)

The Court: Court is adjourned until tomorrow morning at 10:00 o'clock.

(5:00 p.m., December 12, 1949.)

(Court resumed, pursuant to adjournment, at 10:00 o'clock a.m. on December 13, 1949, at

which time the jurors, defendant, and all counsel were present.)

(Whereupon the court suggested that counsel expedite the examination of the jurors.)

The Court: The jury are all here. We now have the eighth challenge by the defendants.

Mr. Eickemeyer: Excuse Mr. Pappin.

(Mr. Lamb and Mr. Eickemeyer continued the examination of jurors.)

Court: Counsel, you have waived all your challenges; you may administer the oath to the jury.

(The Clerk administered the oath to the jury.)

The Court: Now at this time we will swear in an alternative juror.

The Clerk: Just one?

The Court: I think so.

The Clerk: Joseph S. Smith. [10]

Mr. Lamb: Are we going to select just one, your Honor?

The Court: Well, if you think you ought to have two.

Mr. Lamb: It doesn't make any difference to me.

The Court: Well, suppose you take two and be sure about it, just as a precaution.

(Whereupon Mr. Lamb and Mr. Eickemeyer examined the two alternate jurors.)

(Counsel passed the jurors for cause and waived challenges.)

The Court: Swear the alternate jurors.

(The alternate jurors were duly sworn.)

The Court: Now we will take a recess for about fifteen minutes.

(10:50 a.m.) [11]

Court resumed pursuant to recess at 11:05 a.m. at which time all of the counsel and the defendant were present, and the jury was present.

The Court: I think I will have to tell this jury and counsel not to get up, not to arise just for a recess. We have a sort of immemorial custom, you know, in the morning and when we convene court at noon, or at two o'clock in the afternoon to arise. It is simply an old custom. It is out of deference to judicial authority and that is all, don't get up any other time.

The Court: Now you may proceed, Mr. District Attorney.

Mr. Lamb: Thank you, your Honor.

Mr. Lamb: Ladies and Gentlemen, so that we will all understand the exact nature of the charge I will read to you the indictment which has been filed in the Clerk's office in this court. It is entitled: United States of America, Plaintiff, vs. Meyer Schneider, Defendant, Indictment No. 8088. The grand jury charges. Count one. Offer of bribe. Title 18, Section 201. That on or about the 22nd day of November, 1948, in the State and District of Montana, and within the jurisdiction of this court, Meyer Schneider unlawfully and feloniously promised money to a certain officer and per-

son acting for and on behalf of the United States in an official function, to wit: Harvey B. Apperson, First Lieutenant, [12] United States Air Force, and Base Salvage Officer of the Great Falls United States Air Force Base, as the defendant well knew, for the purpose and with the intent to influence the decision and action of said Harvey B. Apperson in his official capacity and function, as aforesaid, on a certain matter then pending before him in his official capacity, as the defendant well knew, and for the purpose and with the intent to influence the said Harvey B. Apperson to allow and make opportunity for the commission of a fraud on the United States, and to induce the said Harvey B. Apperson acting as aforesaid, as the defendant well knew, to do an act in violation of his lawful duty, as the defendant well knew, in respect to the disposal of salvage property of the United States as aforesaid.

In Count two, Bribery, under Title 18, Section 201. That on or about the 23rd day of November, 1948, in the State and District of Montana and within the jurisdiction of this court, Meyer Schneider unlawfully and feloniously did give a sum of money, to wit: \$1,500.00 to a certain officer and person acting for and on behalf of the United States in an official function, to wit: Harvey B. Apperson, First Lieutenant, United States Air Force and Base Salvage Officer of the Great Falls United States Air Force Base, as the defendant well knew, for the purpose and with the intent to

influence the decision and action of the said Harvey B. Apperson in [13] his official capacity and function, as aforesaid, on a certain matter then pending before him in his official capacity, as the defendant well knew, and for the purpose and with the intent to influence the said Harvey B. Apperson, as aforesaid, to allow and make opportunity for the commission of a fraud on the United States and to induce the said Harvey B. Apperson acting as aforesaid, as the defendant well knew, to do an act in violation of his lawful duty, as the defendant well knew, in respect to the disposal of salvage property of the United States, as aforesaid. Signed a true Bill by the Foreman and by Mr. Pease as the Acting United States Attorney.

Counsel for the defendant has kindly read to you the names of most of the witnesses the Government has subpoenaed. In going back, the evidence which the Government will produce before you by way of bringing the witnesses here will show that the defendant, Meyer Schneider—that name is spelled S-c-h-n-e-i-d-e-r—is engaged together with his father and his brother in a salvage business in the City of New York on Cherry Street, I believe. And that some time along in the fall of 1948 the defendant noticed an advertisement or an invitation for bids or notice that there was an invitation for bids on salvage property out here at the East Base in a trade magazine, and that he wrote to the purchasing and contracting officer at the United States Air Base asking that he be for-

warded an invitation so that he could bid upon the sale of surplus [14] property, salvage property.

An invitation to bid was mailed to him and shortly thereafter, I believe it was in August or the first part of September, his bid for cotton rags, and a separate, the same bid for a separate item of wool rags was received from M. Schneider. With accompanying the bid was his deposit of \$500.00 as required in the invitation and specifications of the bid. His bid was high for those two items. There were other bidders for other items and there were also other bidders for, at least one on the cotton or wool rags. He was notified by the purchasing and contracting officer that his bid had been accepted. A considerable period elapsed before any further communication was had and finally the defendant, Meyer Schneider, wrote to find out whether he had been a successful bidder and at about that time he was actually being notified of the acceptance of his bid.

Under the terms of the contract he was to remove the property within a rather limited period of time, and after this period had expired he was notified by the purchasing and contracting officer he would have to get his property off the base or that his contract would be cancelled and the deposit appropriated depending upon the extent of the subsequent payment or the expense the Government might be put to by reason of his failure to pay the balance due.

About that time a long distance phone call was

received in the office of Harvey B. Apperson to a Private by the name of LaVaughn Walker. The call was from a man in New York City, who identified himself to the Private as being Meyer Schneider, and he asked him what overage there might be in the commodities which he had bid upon. By overage—by contract there is merely an estimate of the amount of weight as far as the particular commodities bid for and that it could be more and it could be less, and he was interested in learning how much overage. And the Private will testify that he advised him that he did not know exactly, and he was asked to tell him what was in the particular bundles of rags he had bought, and he was advised there were parkas and shirts and pants that had been declared as scrap material, not serviceable and not repairable as far as the Army was concerned.

Shortly after that a second telephone call was received from the defendant, Meyer Schneider, again directed to, this time particularly direct to Private Walker, at which time the defendant, Meyer Schneider, asked Private Walker, who was a clerk in the Salvage Office under the authority of Lieutenant Apperson, if there were any socks in this particular shipment or this particular commodity which he had bid for, bid upon and been awarded the contract.

The Private will testify that he told him there were socks in the materials which he had been awarded in the contract and he said: "Well, you know, I am just an ordinary sort of a [16] guy,

and could we do some swapping to get the socks out of the shipment." He was advised by the Private that he didn't know; that he would see what he could do about it. There was a third telephone call I think directed to Private Walker by the defendant, Meyer Schneider, and when Private Walker answered the phone, Lieutenant Apperson happened to be in the office and took the phone from the Private and told Meyer Schneider if there were any transactions to be conducted by the Salvage Office, they should be directed to him because he was in charge of it, and he was the Base Salvage Officer, and if he didn't get his commodities off the Great Falls Air Base, he would be required to cancel his contract and he would have to come out to Montana and make some arrangements for the shipment and to do it immediately.

Very shortly after that another telephone call was received at the Office of the Salvage Officer, again asking for Private Walker or Mr. Walker, and Lieutenant Apperson will testify that when he advised the operator that Private Walker was not in the office but that he was the Base Salvage Officer, the call having come from New York City, the party said he didn't want to talk with the Lieutenant, and no conversation took place at that time.

In the conversation which Lieutenant Apperson had with the defendant, Meyer Schneider, the defendant, Meyer Schneider, told Lieutenant Apperson that he would come to [17] Great Falls and be

here on the 15th day of November, if I recall the correct date. On the 15th the defendant failed to appear as he had indicated that he would, so at that time Lieutenant Apperson will testify he put in a collect call to the defendant, Meyer Schneider, and told him again that that contract was going to be cancelled if he didn't come out here and get his commodities and make arrangements for the shipment and he then told him he would be here on Monday, November 22nd, and he would contact him when he got in town.

Nothing further was heard until early morning or sometime the morning of November 22nd, and Lieutenant Apperson will testify that the defendant contacted him and they made an appointment for sometime in the morning shortly after ten o'clock, or something like that. Lieutenant Apperson will testify that on that particularly day he was O.D., as they call it in the Army, Officer of the Day, and his schedule of hours was from midnight of the 21st to noon the day of the 22nd, and then because he would be engaged in other duties he advised or told Sergeant Aulgur, the non-commissioned officer in charge of the salvage office that when the defendant, Meyer Schneider, arrived at the Air Base to go to the gate and pick him up and bring him to the office and he would be there shortly after ten o'clock. So on that particular day Sergeant Aulgur testified he received a call from the gate, got in an Army vehicle and went down to the gate and picked up the defendant and took

him to the base salvage office, and when they walked into the office they were reclassifying and laying out in separate lots some serviceable equipment that is normally designated in the Army as surplus property usable. The officer will testify in defining the difference between scrap or salvage property and surplus property. That these articles that were laid out through the long sort of a barracks and into the office where the salvage officer maintained his records were these small piles of usable worthwhile merchandise consisting of parkas and pants and shirts and field jackets and things of that sort.

That shortly after he arrived at the office one of the other men employed there left, leaving Sergeant Aulgur and the defendant, Meyer Schneider, alone in the office, and Meyer Schneider immediately looked up and down through there and saw these usable items and asked Sergeant Aulgur if it wasn't possible for him to make some kind of deal on these usable items, and Sergeant Aulgur advised him at that time that these commodities were to be put up for bid, and that they were being classified at the time and that he would be glad to get him the paper, and at that time the defendant, Meyer Schneider, said: "Oh, no, I think maybe you misunderstood me; I mean can't the two of us get together." Sergeant Aulgur told him there was no possibility of that and went [19] over to get the invitation for the bid.

Shortly, almost immediately thereafter Lieutenant Apperson, on an interval from his duties as

Officer of the Day, came into the salvage office, and after meeting the defendant, Meyer Schneider, they got in Lieutenant Apperson's car and drove from the salvage office down to the salvage yard where there is a building enclosed in a fence where the commodities which had been awarded and bid for and awarded to the defendant were located. And as they drove up in front of the warehouse before getting out of the car the defendant, Meyer Schneider, in talking to the Lieutenant about swapping and switching the, some of these useless items included in this scrap materials for serviceable things, and told Lieutenant Apperson that there were lots of ways that money could be made in this particular business, and that he would like very much to have some of these serviceable items which he had seen added to his particular shipment.

Lieutenant Apperson—I have slipped over one. While they were in the office before going down to the salvage yard he had asked Lieutenant Apperson if there was any opportunity to get together on these serviceable items. Lieutenant Apperson advised him that he had no authority to make what is known as a spot sale, and the Lieutenant will testify that a spot sale is where one arranges and the officer is authorized by his commanding officers to accept [20] oral bids or similar to an occasion where the successful person probably makes his bid on it and if it is acceptable in the best judgment of the officer so authorized he may accept

the money and deliver the merchandise right there rather than making regular bids. He advised the defendant, Meyer Schneider, that he had no authority to do that and that the only way those usable items could be purchased would be on invitation for bids similar to that which he put in for the scrap materials.

After that conversation they drove down to the salvage yard and began talking about swapping and switching and adding particular materials to his particular shipment. Lieutenant Apperson told him it was not possible; that he would have to bid just the same as anyone else did and he had no authority to exchange one of the articles from one to the other. At that time the defendant said: "Well, I will give you half a quid to a couple of G's, and I can take care of you; I have got it." And patted his brief case which he was carrying with him. The Lieutenant said, no, there was nothing he could do about it, let's go in and look at the articles which are in your shipment.

So the two of them got out of Lieutenant Apperson's car and went into the salvage warehouse and he took a look at the articles which he had purchased and stated to Lieutenant Apperson that he couldn't make a fish-cake out of this stuff. So immediately after that they left the warehouse. [21] Lieutenant Apperson took him back and called a taxi for him and they had made an appointment for the following day when he was to get his commodi-

ties into a freight car, and get, finish his payment and get his commodities off the Air Base.

Immediately after leaving the defendant, Meyer Schneider, Lieutenant Apperson went to the office of Special Investigation, which may be called O.S.I. when you get into the case, and reported to Captain Brynildson that the defendant, Meyer Schneider, had promised to give him from half a quid to a couple of G's as a bribe for permitting him to substitute materials and get some additional materials other than that which he legitimately purchased.

The Officers will testify they immediately called the F.B.I. office here in the city of Great Falls, and after eating lunch they came to the office here in the Federal Building and reported the occurrence as far as the defendant Meyer Schneider is concerned to Special Agent Jack Matthews of the Federal Bureau of Investigation. The stories, the statements of Mr. Apperson, Lieutenant Apperson given to Mr. Matthews were considered by Mr. Matthews, and that he very shortly after that telephoned his office, his head office in the city of Butte, and then telephoned me in the city of Billings to discuss the situation as it was advanced at that time.

After the conversation with Mr. Matthews' office and with me, Lieutenant Apperson made arrangements with Mr. Matthews to go to the legal adviser of the Army, the Judge Advocate at the Air Base, and also to Colonel Chennault, who was the Com-

manding Officer of the Air Base, to secure authority from the Army for Lieutenant Apperson to cooperate with the Federal Bureau of Investigation and the United States Attorney's office in the continuing investigation of the activities of Meyer Schneider.

After this authority was secured Mr. Matthews and Mr. Lieutenant Apperson will testify that Lieutenant Apperson was very carefully cautioned that in no particular should he encourage the defendant, Meyer Schneider, but to let him take the reins, as the saying might be, and to be the driving force and merely accede to any wish of the defendant's he might express and just let him go and see how far he would go. Lieutenant Apperson expressed a willingness to cooperate and had an appointment with the defendant, Meyer Schneider, the next day at about two o'clock. The authority was secured on the 23rd, and that afternoon about two o'clock. So about two o'clock the Lieutenant went down to the front gate of the Air Base and picked up the defendant and went to the office and Lieutenant Apperson showed him a list of surplus property which he had in the office and the defendant said: "Well that is the kind of stuff I am looking for." And they discussed the possibility of getting labor to load the [23] articles upon a freight car which had been spotted at the Air Base for the defendant, Meyer Schneider, and the Lieutenant asked Sergeant Aulgur to go over and get some additional help and that the defendant Meyer Schneider would

pay them for their services in loading the car, and also secured a truck so that the articles could be hauled from the salvage yard up to the place where the car had been spotted.

The defendant told the boys loading the car that he wanted—or somewhere along the line he took him over then to the warehouse where a lot of the surplus materials had been put in boxes and cartons and marked upon the cartons as to their contents and he looked through all of them and said: "That is fine." And he told the boys that when they were loading the car to put all those articles down in the bottom and to put all of his legally acquired articles, the rags, bundles of rags on top of these particular articles.

So the truck went to the building, 1045, I believe it is, and loaded about five or six loads of boxes and cartons of all sorts of commodities, of shoes, parkas, pants, overcoats, practically every kind of serviceable item that the Army has as far as wearing materials is concerned. And the officers will testify that the total unit cost of those particular articles to the United States was \$36,062.12. That the defendant took everything out of the warehouse except some McClellan saddles and some of the tires; [24] every usable item out of one complete warehouse and had it hauled over and put it in the freight car. And he and Lieutenant Apperson went back and forth together in the course of the afternoon in doing that and the defendant was jotting down the articles from the cartons that were

being put in. So after the car was partially loaded or almost completely loaded as far as the unlawfully acquired articles were concerned the boys asked for some coffee, the fellows loading the car, and Lieutenant Apperson went into get some coffee and left Meyer Schneider waiting in the car, and this was the first opportunity the Lieutenant had any opportunity to make any extensive contact with the members of the F.B.I. out there on the Base, and he called in and said they were about ready to go to town.

So at that time Special Agents Matthews and Leonard left the Office of Special Investigation and drove out the gate of the Air Base planning to follow the car of Lieutenant Apperson in which they believed the defendant, Meyer Schneider, would be. Lieutenant Apperson and Meyer Schneider then went back to the freight car and gave the boys the coffee and Mr. Matthews was a little too fast and found out he preceded Mr. Schneider and Lieutenant Apperson from the Base, and met them this side of the Air Base and turned around and followed them. An F.B.I. car was immediately ahead of the car in which Lieutenant Apperson and Meyer Schneider were riding in [25] and they were followed down town and parked over here near the Electric Hotel, and at that time there were several agents in that immediate vicinity, and Lieutenant Apperson's car was vacated by Lieutenant Apperson and Meyer Schneider. They walked around the corner and went into Murrill's

Bar. They were immediately followed by members of the staff of the Federal Bureau of Investigation, and when Mr. Matthews who followed a little, well, after the rest of them came there, was advised by one of the agents that Lieutenant Apperson had just gone into the men's toilet, so Mr. Matthews immediately went into the rest room and made a complete search of the person of Lieutenant Apperson to determine what money or other property or money he might have upon his person at that time. And Lieutenant Apperson left the wash room and just as he got out the door in came the defendant, Meyer Schneider, and Mr. Matthews stayed in there for a moment or two and then left. And Meyer Schneider came out shortly afterwards and after Lieutenant Apperson and Meyer Schneider had a drink or two they left and returned to Lieutenant Apperson's automobile where the defendant removed his brief case and they walked around the corner and walked down the street to the Park Hotel accompanied, not to their knowledge, accompanied by a number of the F.B.I. Agents.

They walked into the hotel and got, Meyer Schneider got his key to his room, room 340 in the Park Hotel, and he [26] and Lieutenant Apperson got on the elevator and went up to Meyer Schneider's room. After Lieutenant Apperson and Meyer Schneider got to room 340 in the Park Hotel, Meyer Schneider ordered some mix and some ice because he had some high grade scotch he wanted to give the Lieutenant and gave him, they had a

drink and he opened up his brief case and he counted out in twenty and ten dollar bills, \$1400.00, and looked over at the Lieutenant and the Lieutenant sat there, didn't say anything, he didn't smile, or he didn't do anything at all and apparently gave the impression to the defendant that he was dissatisfied with the amount of the payment so the defendant very generously added \$100.00 to it so there were fifty twenty-dollar bills and fifty ten-dollar bills, making a total of \$1500.00, and then he handed the stack of bills to the Lieutenant and the Lieutenant asked him for an envelope. The defendant took, Meyer Schneider took an envelope with his return address "M. Schneider" and his business address upon the envelope and handed it to the Lieutenant and the Lieutenant put the \$1500.00 into the envelope and sealed the envelope and put it in his pocket and left the room very shortly afterward and went down in the elevator and handed the \$1500.00 envelope to Mr. Matthews. Lieutenant Apperson was again searched and still had exactly the same property upon his person that he had when he had been searched a few minutes before going to the hotel room. And that the Agents [27] Matthews and Strahl went up the elevator immediately and knocked on the door of room 340, identified themselves as members of the Federal Bureau of Investigation and then the defendant opened the door and they came in and advised him he was under arrest for bribery of an Army officer.

Lieutenant Apperson will testify that in the course of the afternoon and the various conversations that he had with the defendant the defendant told him he operated on a very large scale in all the eastern depots; that in one particular place he had a man there who got the commodities as they came on to the depot and short-counted them and set aside materials for him so he was able to get it, and most of these commodities would never reach overseas destinations because they would go to other salvage operators who operated on that basis in the east. He said he made a practice of making bids on salvage property around at various places in the United States and after securing the bid he then put a claim into the United States Government that the commodities were not as represented to him and asking for damages, and that he had political influence in the east and that he obtained assistance in getting those claims of damages allowed, and that they had a large salvage business; they were doing a million dollars worth of business a year and they were in fine shape——

Mr. Leibowitz: Excuse me for a moment. I don't [28] want to interrupt; this narrative before the jury I think it is high prejudicial and I don't think it has anything, any bearing upon the issues of this indictment. I don't think this ought to continue on this course.

The Court: Well, his admissions are on other offenses he committed. The jury would be warned in the instructions as to that that they are not

to consider and I doubt whether he could prove other offenses that might be admitted or testified to. It all depends upon how this statement was made, under what circumstances he the defendant making admissions was cautioned or warned. You know, there are a good many things that come into the consideration there, and admissions or statements made by a defendant about what he had been doing and how he carried on his business. I don't know, it is hard to tell right at this time how that would present itself and be brought out from the lips of a witness.

Mr. Lamb: Well, if the court please, in the feeling that perhaps I may have overstepped the bounds of propriety I will apologize to court and counsel and to the jury and if any evidence of that sort is not admissible and is not admitted in evidence I, of course, will join with the court and other counsel in asking the jury to completely disregard anything I might say that is not borne out by the witness.

Mr. Leibowitz: I doubt very much whether it is competent evidence. I think the remarks here made are very [29] prejudicial, are very prejudicial to the defendant.

The Court: I don't think so. I think we can take care of that situation when we meet it.

Mr. Leibowitz: May I have an exception, your Honor?

The Court: Certainly.

Mr. Lamb: In the course of the conversa-

tions the defendant advised Lieutenant Apperson he had a permit in New York to carry a gun and that this information had been conveyed to the Federal Bureau of Investigation; and they will testify that as a course of their instructions and training that when they were advised that a man may possibly have a gun that they were to make a complete search in order to protect their own lives as well as the life of the person they are arresting; and, therefore, upon going into the room and advising the defendant he was under arrest for bribery of an Army officer and he would be arraigned as promptly as possible, a search was made to determine the presence of a gun that might be available to the defendant, and in the course of that investigation there was found some additional tens and twenty dollar bills. I don't recall the exact number, something over \$1,000.00 in the brief case of the defendant and a list totaling the, all of the commodities which had been put into the freight car found adjacent to the telephone stand, and that this item, this article, or this memorandum was seized and the defendant was advised that [30] he should put his money in the safe down in the hotel because they would be compelled to remove him from the room as he was under arrest, and he advised them he did not care to and he wanted to leave the money in the room, and they secured a receipt from him showing that nothing had been taken from him and all the articles and money and

additional tens and twenty dollar bills had been left with him.

He was then taken from the Park Hotel over to the Federal Building and placed in the Marshal's office; handcuffs weren't put on him at that time, nor was any gun displayed. The defendant was taken to the Marshal's office and the United States Commissioner was immediately contacted and came to the Federal Building, the complaint was prepared, and the United States Commissioner went in and arraigned him and set bond and the defendant was then taken to the F.B.I. office because during the course of the investigation of the room a telephone call had been, had come to the hotel room and the operator had been advised that Mr. Schneider was not at liberty to take the telephone call and therefore he would come back as soon as it was conceivably possible.

Mr. Leibowitz: May I interrupt again? I am sorry to do so.

Mr. Lamb: I am sure you are.

Mr. Leibowitz: But I think whatever Mr. Lamb is saying now has nothing to do with this present indictment. [31] I think up to this point he has stated everything that could be possibly proved under the indictment to prove the offense and I think anything that is done subsequent to the actual giving of money is immaterial and incompetent. I don't think it would be fair to the defendant if these extraneous matters enter into the case.

The Court: What do you refer to as extraneous matters?

Mr. Leibowitz: I am referring to the——

The Court: The list that had been prepared of the goods that were taken——

Mr. Leibowitz: No.

The Court: That is extraneous?

Mr. Leibowitz: No, I am not referring to that at all. I am only referring to what took place after the money was actually transferred from the defendant to Mr. Apperson. I think that is all that is required, if they can prove that, to prove the offense and what happened subsequent to that is wholly immaterial and highly prejudicial to the defendant.

Mr. Lamb: Mr. Leibowitz, is it the practice in your particular area of the United States on the admissibility of statements made by a defendant after being properly advised of his constitutional rights for that to be admissible before a jury?

Mr. Leibowitz: Mr. Lamb, I am not discussing that. I am not discussing that phase of it. [32]

The Court: Well, Mr. Leibowitz, we will see what is admissible and what isn't.

Mr. Leibowitz: May I have an exception, your Honor?

The Court: Certainly.

Q. (By Mr. Lamb): That after he had been properly arraigned and was taken to the Federal Bureau of Investigation office where all of the agents and the defendant ate and let the defendant place some phone calls to his attorney, Mr. Leibowitz, at his expense and Mr. Louis Seidman in New York City, and telephone call were received back

from them, and that after those telephone calls and these calls were placed at the defendant's request, and that after these telephone calls were completed he was advised by Mr. Matthews of the Federal Bureau of Investigation that he need not make any statement, that he was entitled to an attorney, that no promises, threats or inducements were being offered to him, and that anything he might say at that time might be used against him in a court of law.

At that time Mr. Matthews interviewed him concerning his operations in various parts of the United States and with reference to this transaction out at the United States Airbase here in Great Falls, and when Mr. Matthews asked him if he had given Lieutenant Apperson any money, he emphatically denied that he had given him any money; consequently in the course of the investigation he was again asked that question and he [33] said: "No, I didn't say that. I said I didn't give him any money for anything that transpired at the Airbase." And then he was asked if he gave Lieutenant Apperson any money with reference to any real estate transaction or anything of that sort, and he said he did not care to discuss the matter.

And in the course of the telephone conversations with New York City he was very emphatic in his instructions that, "you get that shipment out tomorrow," referring to Smalzer's merchandise, "Get that shipment out tomorrow." And that after some continuing statements that Mr. Matthews will testify to the defendant was then removed from the Federal

Bureau of Investigation office to the County Jail pending his making bond.

And each of the witnesses which the Government will bring before you on the stand will undoubtedly tell you the story far better than I have and in much more detail. And again I wish to state that, of course, I am not testifying and anything I say is merely my belief in what the witnesses will testify, but it is the actual testimony that the witnesses give themselves and the instructions of the court that you are to consider and not the remarks I make because I want to be absolutely fair and impartial to this defendant. I thank you.

The Court: Do you desire to make your statement at this time, Mr. Leibowitz? [34]

Mr. Leibowitz: I didn't want to interrupt the giving of the statements Mr. Lamb made but I think many of those statements are objectionable and prejudicial and I don't think he would be permitted to prove in the evidence——

The Court: You go ahead and make your statement and we will see about that later on.

Mr. Leibowitz: Now I want to take an objection to the statements made.

The Court: All right, you have done it.

The Court: I am asking you whether you want to make your statement to the jury at this time.

Mr. Leibowitz: Oh, no, I waive the opening.

The Court: Well, we can't start in on anything this morning.

(11:55 a.m.)

(The Court admonished the jury.)

The Court: Court is in recess until 1:30 this afternoon.

(11:57 a.m., December 13, 1949.)

(Court resumed, pursuant to recess, at 1:30 o'clock p.m., at which time the jury, defendant, and all counsel were present.)

The Court: You had finished your statement?

Mr. Lamb: Yes, your Honor.

The Court: You may call your first witness. [35]

Mr. Lamb: Lieutenant Harvey B. Apperson.

Mr. Emigh: May it please the court, at this time may the record show that the defendant moves that the rule for exclusion of witnesses be invoked.

The Court: Well, call the witnesses.

Mr. Lamb: You want them all called and sworn?

The Court: Yes, all the witnesses.

Mr. Lamb: The witnesses will stand up as I call their names: Lt. Harvey B. Apperson, Sergeant Aulgur, Captain Brynildson, Mr. Fleming, Captain Greene, Mr. Leonard, Mr. Matthews, Mr. Strahl—he seems to be absent—Mr. Spaulding, Private Walker, Mr. Zigler is not here, your Honor. Mr. Alexander, and Thompson.

Mr. Emigh: May the record show that except as to the defendant there are no witnesses in the court room in behalf of the defendant.

The Court: Not in the court room.

Mr. Emigh: If there are any anticipated, they will be notified of it, the court's rule.

The Court: They are not here now, so they will have to be excluded the same as the others. Now

the witnesses must be given accommodation in some office nearby so that they will be ready and available when they are called to take the stand. Now as to Mr. Matthews, you need him?

Mr. Lamb: I was just going to ask the court if that [36] exclusion rule would apply to an agent who is an officer of the court.

The Court: He is there to assist the District Attorney?

Mr. Lamb: Yes, your Honor.

The Court: I think the rule should not exclude him. You may stay, Mr. Matthews, and the others may——

Mr. Lamb: Do you wish them sworn now?

The Court: Yes, they may be sworn now instead of being sworn individually to save some time.

(The witnesses were duly sworn.)

The Court: That will save swearing them individually as they are called to testify. And Lieutenant Apperson, is it?

Mr. Lamb: Lieutenant Apperson is my first witness. The rest of you will have to be excused.

LT. HARVEY B. APPERSON

was called as a witness and testified as follows:

Direct Examination

By Mr. Lamb:

Q. State your name, please.

A. Harvey B. Apperson, First Lieutenant,
United States Air Force.

(Testimony of Lt. Harvey B. Apperson.)

Q. Lieutenant, how long have you been in the armed forces of the United States of America? [37]

A. Since September, 1940, with the exception of a year and a half when I was on inactive duty.

Q. A year and a half of that period you were not on active duty? A. That is right.

Q. And where are you now stationed?

A. I am stationed at a field called Bluey West One, Greenland.

Q. Will you spell that for the reporter?

A. It is spelled the way it sounds.

Q. In Greenland? A. Yes.

Q. And when were you transferred to that particular field, Lieutenant?

A. I was transferred there in April, 1949.

Q. And in the summer and fall of 1948 where were you stationed?

A. At the Great Falls Airforce Base.

Q. That is what is commonly known here in Great Falls as the Eastbase?

A. That is correct.

Q. And where is the Airforce Base to which you have just referred located with reference to the city of Great Falls?

A. East of Great Falls about four miles, I think.

Q. And when were you first transferred to the Great Falls Army Airbase?

A. I was called back to active duty from Great Falls here to that Base and I reported there the 1st of March, 1948. [38]

(Testimony of Lt. Harvey B. Apperson.)

Q. And during the year and a half that you speak of that you were not on active duty where did you reside? A. Great Falls.

Q. And are you married? A. Yes.

Q. As I understand it you married a Great Falls girl, is that correct? A. That is correct.

Q. And when were you called back to active duty at the Great Falls Airbase?

A. Well, I reported the 1st of March. I got my orders around April 15th.

Q. That was March, 1948, right? A. Yes.

Q. And in addition to your status as a commissioned officer in the United States Airforce what other capacities, what other duties were assigned to you at the Great Falls Airbase?

Mr. Eickemeyer: Just a minute. If the court please, that is objected to, incompetent and immaterial and not a proper foundation having been laid. If he is acting under any other capacity and there are written rules or regulations of appointment, I think the authority of that plan or written appointment should be here. You can't volunteer. It is not the best evidence and he cannot volunteer his capacities, particularly in this case where they are very important.

Mr. Lamb: I refer the Court to *Sabbatino vs. United States*, 298 Fed. 409, 266 U. S. 602, in which the court in [39] specifying the officer in a case of this particular nature must testify directly to the duties and show that the bribery was within the line

(Testimony of Lt. Harvey B. Apperson.)

of his official duty. However, if there is any particular question about it, I imagine I would be able to find the records of his particular duties out here at the Airbase, if that is what they wish me to do. I will have to subpoena them, however.

The Court: I think I remember the Sabbatino case, the first one you refer to. He can testify to all that, but I think I will require you to bring in some evidence of his authority, and if you will assure the court you will do that, I will let him proceed and overrule the objection for the time being.

Mr. Eickemeyer: May we have an exception, if the court please?

The Court: Yes. You don't need to take an exception. You know you are excepted any way.

Mr. Eickemeyer: May it please the court, due to conflict of authorities on that that we will be deemed to have an exception to the advance rulings of the court and save our taking an exception?

The Court: Oh, yes, sure.

The Court: Very well, go ahead and interrogate the witness, and bring any authority available and get going. [40]

Q. (By Mr. Lamb): In what other capacities were you assigned in addition to your capacity as commissioned officer, United States Air Force?

A. When I first reported I was on competitive tour where I was on probation after three months. First I was Port Control Officer, acting as person-

(Testimony of Lt. Harvey B. Apperson.)

nel officer, and Adjutant, and so forth, and after three months why I was assigned to supply and maintenance group as Guard Officer and Salvage Officer.

Q. How many other salvage officers were there at the Airbase adjacent to the Eastbase?

Mr. Eickemeyer: Now, if the court please——

A. I was the only one. And there was a Major Riffle during that time as Port Control Officer; however, when I relieved him I was the only Salvage Officer.

The Court: You were the only salvage officer when?

A. I took the duty I think in around July.

The Court: 1948? A. 1948, yes, sir.

Q. (By Mr. Lamb): How long did you carry on the duties of Base Salvage Officer at the Great Falls Airbase?

A. Up until February when I was, of 1949 when I was relieved and transferred overseas.

Q. Now, are you familiar with the, what were your duties as the Base Salvage Officer at the Great Falls Airbase from [41] the summer of 1948 through the fall of 1948?

Mr. Eickemeyer: If the court please, I assume that our objection goes to all this line of testimony?

The Court: Certainly. Certainly, it is overruled.

A. My duty was to store, segregate and handle the final disposition of all salvage and surplus materials at the East Base.

Q. Of course, many of us are unfamiliar with

(Testimony of Lt. Harvey B. Apperson.)

the procedure that is followed in the disposal of surplus property, from what department or branch of the Air Force did you procure the materials known as surplus property?

A. Well, they would be obtained from the Base Quartermaster, who is generally referred to as the Base Quartermaster.

Q. And when you received various articles or various properties from the Base Quartermaster had they been classified at that time?

A. Yes, in most cases they were classified in either useful items or scrap.

Q. And what were the technical names that were applied to the useful items?

A. You mean as an item?

Q. No, as a group, in what classification?

A. Salvage.

Q. The useful items are called salvage?

A. Yes.

Q. And the articles which are not useful are called [42] scrap?

A. That is correct.

Q. Is that correct?

A. Yes.

Q. And accompanying the transfer of properties from the Base Quartermaster what records were there?

A. Well, there is a what we call a form 447, which is a property turn-in slip.

Q. A turn-in slip?

A. Yes.

Q. And do those turn-in slips accompany scrap property?

A. Yes.

(Testimony of Lt. Harvey B. Apperson.)

Q. You have a turn-in slip then in all of these transactions for each and every article which comes to you either as scrap or salvage property?

A. In the case where it comes from the Base Quartermaster; however, abandoned property wouldn't have a turn-in slip.

Q. Abandoned?

A. Yes. We have a certain amount of abandoned property which there is usually in ashcans and where it is useful we pick it up and get what we can back for the Government.

The Court: Gentlemen, can you hear the witness?

Mr. Eickemeyer: Not very well.

The Court: Could you speak a little louder?

A. It's turned in with turn-in slips. In the case where it is abandoned property it is very small amount of it, and where we do have abandoned property it sometimes get in ash [43] cans we pick it up and sell it as scrap to obtain as much revenue for the Government as we can.

Q. And as you secure transfer of property from the Base Quartermaster which is accompanied by a turn-in slip listing that particular shipment or transfer of property what is done with those particular records or turn-in slips that come with the transfer of the property?

A. We keep them in what we call a jacket file which is just a manila folder and we keep those

(Testimony of Lt. Harvey B. Apperson.)

and that is how we keep a record of those useful items.

Q. And in what office are those maintained?

A. They are maintained at the Base Salvage Office.

Q. And after you were appointed as the Base Salvage Officer in July, 1948, and until February, 1949, did you maintain a record of all turn-in slips and all property which came into your possession as the Base Salvage Officer? A. Yes.

Q. And what were your duties with reference to the disposal and sale and invitations to bid on scrap property?

Mr. Eickemeyer: Just a moment. If the court please, at this time we wish to renew our objection to any testimony with reference to duties on the part of this witness upon the ground and for the reason that this evidence is not the best evidence and there are provided rules and regulations for giving the authority and the duties of a Base Salvage [44] Officer and we would like to have those.

The Court: Well, if you have them; have you?

Mr. Lamb: Do you want the whole book or just the pages that pertain to his duties?

Mr. Eickemeyer: Whatever you are going to rely on.

Mr. Lamb: Will you get the book, Mr. Matthews?

The Court: I suppose you can make any places you deem important that you rely upon in connection with this special work or assignment.

(Testimony of Lt. Harvey B. Apperson.)

Q. (By Mr. Lamb): Lieutenant, I will show you a loose leaf bound book with the letters A. F. Manual 67-1 on the face of which says U S A F Supply Manual, Department of Air Force, and ask you what this exhibit Marked Plaintiff's Exhibit No. 1 is?

A. That is a manual that we are governed by.

Mr. Leibowitz: May I make my objection, your Honor. I don't think he is the proper authority to qualify that is the manual that is official and published.

The Court: Don't you think your objection is a little premature to say what it is. He hasn't even opened his mouth hardly.

A. This is all the rules and regulations we are governed by in supply activities in the Air Force in the Base level.

Q. And in conjunction with your duties as the Base Salvage Officer were you given or furnished a copy of the [45] U S A F Supply Manual to govern and control your actions as Base Salvage Officer?

A. Yes, I was.

Q. And does this manual which you now hold in your hand marked Plaintiff's Exhibit 1 contain the Air Force regulations describing your duties and actions which you should take and controlling all of your actions as the Base Salvage Officer?

A. It does.

Mr. Leibowitz: Your Honor, we would like to take a look at it and see when it was published.

(Testimony of Lt. Harvey B. Apperson.)

Mr. Lamb: You may see it in just a moment.

The Court: Go on and make your record what it is and what it contains.

Q. And in conjunction with your taking over the office of the Base Salvage Officer did you familiarize yourself and study the particular regulations that controlled and governed all of your actions and showed your duties as the Base Salvage Officer?

A. I might bring in there that this is a, the re-written regulations. It is the same as the Air Force Technical Manual 38-505 but this is exactly the same thing, that is, publication not word by word but substantially the same.

Mr. Leibowitz: Your Honor, under those circumstances I don't think it is proper for him to testify it was the book given to him during the period he was Airbase Salvage Officer. [46]

The Court: Where did you get the book?

A. This is the, I am sure this is the book. I presume this is the same book of regulations.

Q. Or same book? What book is it?

A. Our Air Force Manual 67-1.

Q. This is the same as Air Force Manual 67-1?

A. Yes, sir.

Q. Are they both alike in respect to your duties as Salvage Officer?

A. Yes, sir, they are. This is Air Force Manual 67-1.

(Testimony of Lt. Harvey B. Apperson.)

Q. Is that the one you followed, the one you have in your hand?

A. Yes, sir, this is the one I followed. This is the latest regulation.

Q. That is the latest regulation? A. Yes.

Q. Which was the regulation at the time of this case occurred involved? A. Yes, sir.

Q. And you were following those regulations then as Salvage Officer at the Eastbase as we call it? A. Yes, sir.

Mr. Lamb: At this time we will offer in evidence Plaintiff's Exhibit No. 1.

Mr. Leibowitz: Well, I object to the introduction of this volume as evidence of his authority or of evidence of [47] what he is supposed to do in his duties and function on the ground there is no proof here that this very identical manual was in his hands or something like it at the time he was functioning as Airbase Salvage Officer on November 22 and 23, 1948. He says this is a rewritten book.

The Court: That is what I asked him and he said it was. He said that was the book that governed his actions and official conduct as Salvage Officer.

Mr. Leibowitz: There is no proof here that was actually the book he had.

The Court: Well, this is the same similar book; you have looked it over, haven't you?

A. Yes, sir, there are thousands printed like that.

The Court: Overrule the objection; go ahead.

(Testimony of Lt. Harvey B. Apperson.)

Mr. Leibowitz: I will take an exception to that, please.

Q. (By Mr. Lamb): Lieutenant, referring to the index appearing on the second page of Plaintiff's Exhibit No. 1, the regulations governing your duties as Base Salvage Officer are shown in this volume commencing on page 571, is that correct?

A. That is correct.

Mr. Lamb: Ladies and gentlemen, turning to pages 571 and to succeeding pages of the volume which has been marked Plaintiff's Exhibit 1, and particularly on page 572 [48] under the title "Salvage Officer" is paragraph (1):

"The salvage officer acts for the Commanding Officer on all salvage activities at his installation. He is not accountable for property turned in for salvage but is responsible at all times for the proper storage and the disposition of salvage turned over to him. The salvage officer will exercise strict supervision over all transactions and will use due caution and diligence to prevent irregularities or opportunities for fraud and/or collusion. He is responsible for the proceeds of sales coming into his custody. He will supervise the classification, segregation, storage and disposition of salvage at his installation, maintain required records and render required reports, and keep himself thoroughly informed on markets for all salvage. He will make regular inspections of points where salvage is created and accumulated and from which it is col-

(Testimony of Lt. Harvey B. Apperson.)

lected, such as sanitary fills, dumps, incinerators, or other place where waste materials may accumulate, for the purpose of insuring proper segregation and maximum recovery. As the representative of the Commanding Officer, the salvage officer will act as a supervisor on utilization of salvaged items. To a large extent the ingenuity and the amount of effort expended by a salvage officer will determine the success of a salvage operation. The close cooperation of units at the installation is an important factor in obtaining good results in operations. [49] This can often be attained by an educational program. The maximum conservation of salvage materials by units at the installation may be stimulated by such methods as competitive salvage programs between units, waste paper drives, and close inspection and supervision of points where salvage is created or accumulated.

Mr. Lamb: On page 573, under the heading "Duties of Salvage Officers," in subparagraph (b): Base salvage officers will insure that all property turned in to salvage is accompanied by a certificate executed by an authorized person, to the effect that the property has been inspected and is subject to salvage action. (c) When, in the opinion of the salvage officer, property in salvage can be used for a specific purpose other than that originally intended, he may request that the repair shop personnel determine the suitability of property for this purpose.

(Testimony of Lt. Harvey B. Apperson.)

Again on page 573 appears the title: "Receipt and Handling." And near the bottom of the page at the right you will find a paragraph (d) "Documents effecting transfers," which reads in part: "Property turned in to the base salvage officer will be accompanied by one of the following." Subparagraph (1): "DA AGO Form 447 Turn-in Slip," and then it has reference of the section number.

Appearing on page 574 under the title of "Segregation of Materials: (1) Since the segregation of waste materials [50] is simplified and costs of handling are kept at a minimum if the material is separated at the source and since most salvage losses are due to failures of initial segregation by the accumulating units, sufficient suitable receptacles will be provided so that complete prescribed segregation may be accomplished."

Appearing on page 573 is a long paragraph under the title of "Disposition other than by sale," setting forth the utilization, donations, destruction. And appearing on page 577 is the paragraph covering "Disposition by Sale," which reads: "(a) Salvage that is being held for sale will be disposed of whenever the accumulation is of sufficient size to interest bidders. (b) Full publicity will be given all sales both as to material to be sold and as to awards. When sales are made on DA AGO Form 1025, "Invitation, Bid and Acceptance," copies of the form and information as to awards may be transmitted

(Testimony of Lt. Harvey B. Apperson.)

to periodicals for publicity purposes, to persons who request invitations for the purpose of notifying their clients, and to interested Government agencies."

Under subparagraph (e) "Sales will be made on the basis of adequate competitive bidding, unless otherwise authorized. All lots are to be offered in reasonable quantities that will permit all bidders, small as well as large, to compete on equal terms. Wide public notice will be given concerning such sales." The time interval between notice and [51] sale will be adequate to give all interested purchasers a fair opportunity to buy. The right to reject any or all bids will be reserved by the salvage officer. Scrap warranty is required only in negotiated sales of scrap and when flyable aircraft are sold as scrap."

Under subparagraph (1) "The following are the authorized methods of sale: (1) Competitive bidding (DA AGO Form 1025, 'Invitation, Bid, and Acceptance.') (2) Useful item lots, (3) Spot negotiation, (4) Auction, (5) Retail.

And subparagraph (m) "Sales will be made by competitive bidding, written bids, in the manner specified in paragraph 343 unless a determination has been made by the salvage officer in each instance, and approved by the commanding general, air material area, or commanding general, overseas theater air command, to the effect that it would be in the best interests of the Government to dispose of the

(Testimony of Lt. Harvey B. Apperson.)

property by negotiated sale in one of the methods authorized in paragraph 342 1, preceding or as follows: (1) Sale at nominal price for disaster relief, (2) Sale by allocation."

Appearing on page 579: "1. Processing Competitive Bid Contracts: Chart 30-6. (1) The base salvage officer will: (a) Provide the base purchasing and contracting officer with a list of materials available for sale. (b) Provide the base purchasing and contracting officer with a list, in duplicate, of prospective bidders who should be invited to bid, together [52] with any other information that will enable him properly to publicize the sale. (c) Provide the base purchasing and contracting officer with any special information necessary for inclusion in the provisions of the contract, including any conditions of sale peculiar to the items to be sold. (d) Maintain a complete and up-to-date file of prospective bidders. Upon the completeness of this file depends to a considerable extent the effectiveness of the sales phase of the salvage operation. (e) Attend the opening of bids as contemplated in paragraph 343(1)(2)(e) below. (f) Determine that bids are in compliance with existing regulations. (g) Evaluate bids, and recommend, in writing, the acceptance of those bids which in his opinion are in the best interest of the Government. His recommendation will be prepared in triplicate. The original and one copy will be forwarded to the base purchasing and contracting officer, together with

(Testimony of Lt. Harvey B. Apperson.)

the copy of the abstract of bids and the copies of the bids furnished to him by the base purchasing and contracting officer for making these recommendations. (h) Upon presentation of the statement required by paragraph 343 1(2)(o) below, release to the purchaser items listed thereon. (i) Prepare and forward to the base purchasing and contracting officer a list of items and actual quantities of materials picked up by the purchaser. This does not include items sold by retail sales.

And appearing on page 582 under the title of [53] "Spot negotiated sales," will be found the complete regulations concerning those particular sales. And under paragraph (e), "Spot negotiated sales" and contracts will be processed as follows: (1) The base salvage officer will: (a) Obtain written authorization from the area salvage officer to conduct the sale by the spot negotiation sales method. Requests will contain a complete statement of all facts relevant to the proposed sale and a statement showing that the Government will obtain a more definite tangible benefit by use of the spot negotiation method of sale than would be obtained through competitive bidding by use of DA AGO Form 1025."

"(b) Upon receipt of authority to conduct the sale by negotiation, provide the base purchasing and contracting officer with: (1) A list of material available for sale. 2. A list of prospective bidders who should be invited to bid. 3. Any special information necessary for inclusion in the provisions

(Testimony of Lt. Harvey B. Apperson.)

of the contract, including any conditions of sale peculiar to the items to be sold. (c) Evaluate bids received from the base purchasing and contracting officer and recommend to him, in writing, the acceptance of those bids which in his opinion are in the best interests of the Government. (d) Accomplish as necessary the number of copies required to comply with procedures for processing competitive bid contracts."

Appearing on page 584 under the title "Payments": [54] "No property sold will be delivered or shipped to the buyer until the amount due the United States therefor has been paid, except as authorized by the commanding general, air material area, or the commanding general overseas theater air command having jurisdiction."

And under the paragraph, page 584, marked "Weight, Count and Inspection": "To protect the interests of the Government and to prevent errors, fraud, or theft, all salvage property sold will be inspected by the salvage officer or his representative at the time of delivery or shipment to purchasers. Salvage officers will be on the alert to prevent dishonest practices in weighing property. Scales will be periodically examined."

And on page 585 under "Coordination of Sales": "b. (2) A salvage officer or purchasing and contracting officer for the sale of salvage at one of the installations who will be responsible for the sale of the specified items of salvage at the installations so

(Testimony of Lt. Harvey B. Apperson.)

designated. c. Salvage officers at the designated installations will be responsible for the classification, segregation, storage, and preparation for sale of all salvage at their respective installations.”

Appearing on page 586 under the title “Records”:
“a. Base salvage officers are responsible but not accountable for property turned over to them for disposition. Base salvage officers are required to keep records that will enable [55] the inspecting officer and the property auditor to trace the property received from the date of receipt to final disposition. Such records consisting of a voucher register, voucher file, and loose-leaf system, will be maintained to show a continuous and complete record of salvage received, on hand, and disposed of. Salvage records will be maintained on separate sheets for each item, or group of items as required, with the title of the sheet showing both the item number and the description of the item as set forth in the Standard Classification List in Supplement 1 to this section. (b) Base salvage officers are not required to maintain stock record accounts for small lots turned over to them but are required to keep records that will enable the inspecting officer and property auditor to trace the property received from the date of receipt to final disposition. Such records marked “small lots” will be maintained in loose-leaf system or jacket files containing copies of turn-in slips or other transfer documents and documents showing final disposition.”

(Testimony of Lt. Harvey B. Apperson.)

Q. (By Mr. Lamb): Without reading on at great length, Lieutenant Apperson, the paragraphs I read, do they substantially govern your duties as you understood them at the Air Base as the base salvage officer? A. Yes.

Q. And were you familiar with all of those regulations [56] in November, 1948? A. Yes.

Mr. Eickemeyer: May we have that book for a moment to look at it?

Mr. Lamb: Yes, sure; it is in evidence. We might put these in right now so they won't get lost.

Q. Lieutenant, in August of 1948, was there a surplus of scrap materials in your possession and custody and under your control as the base salvage officer?

A. Yes, there was some stuff, quite a bit of it there; not any more than usual, I would say.

Q. And was there any of this material that had been classified as scrap? A. Yes.

Q. And in your performance of your duties and in conjunction with the purchasing and contracting officer were invitations to bid on this particular scrap material mailed out to prospective bidders?

A. Yes, in August and September.

Q. August and September? A. Yes.

Q. And was one of the bidders the defendant, Meyer Schneider? A. Yes.

Q. And from your own personal knowledge do you know what property the defendant, Meyer

(Testimony of Lt. Harvey B. Apperson.)

Schneider, sent in his bid after receipt of an invitation to bid?

A. Yes, he bid on the scrap wool and scrap cotton rags.

Q. Now, were the scrap wool and scrap cotton separate [57] items in the invitation for bid?

A. Yes.

Q. And did he bid separately for the two items?

A. Yes.

Q. Did he bid on any of the other items?

A. No, not to my knowledge.

Q. And was Meyer Schneider, the defendant, the successful bidder or the highest bidder for those particular two items? A. Yes, quite a bit.

Q. Were there other—as I understand it there were other bidders for these particular items?

A. Yes, as I recall there were three other bidders.

Q. But his was away above the other bidders?

A. Yes, quite a bit above.

Q. And upon receipt of his bid what, if anything, did you and the contracting and purchasing officer do?

A. We decided that that was the highest bid and that it would be awarded to him.

Q. And what is the procedure then that is followed when you and the base contracting and purchasing officer——

Mr. Leibowitz: Your Honor, I think at this point we should have the contract itself, which

(Testimony of Lt. Harvey B. Apperson.)

stipulates as to the terms, and so the record may show, may I say mere schedule of the bidders on this merchandise is all.

Mr. Lamb: Are you testifying now?

Mr. Leibowitz: No, I just want to put the contract in is all; that is the best proof. [58]

Mr. Lamb: I merely asked Lieutenant Apperson what they did.

Q. What did you and the base contracting and purchasing officer do?

A. We opened them and found that his was the highest and concurred and then he, as was the practice, sent me a memorandum to the effect that that was the highest, and I, of course, indicated by concurrence by an endorsement that we award it to Schneider.

Q. I will show you an exhibit marked Plaintiff's Exhibit No. 2, and ask you if you know whether this is an exact and true copy of the original contract submitted by the defendant, Meyer Schneider?

A. This is a certified true copy of the bid or the invitation sent to Schneider.

Q. Included herein is the invitation to bid, the bid, and the Government's acceptance, is that correct?

A. That is correct.

Mr. Lamb: I will offer it now. If you have any objection, I will lay a further foundation.

Mr. Leibowitz: Well, simply it does not say the bidder was Meyer Schneider; that it was M. Schneider.

(Testimony of Lt. Harvey B. Apperson.)

Mr. Lamb: You make your objection if you want to.

Mr. Leibowitz: I have no objection to the introduction of this contract in evidence, but merely for the [59] record to say M. Schneider is not Meyer Schneider.

Mr. Lamb: I object to Mr. Leibowitz testifying. If they want to put the witness on that is fine. I object to your getting up and testifying to a lot of things, and the contract reads on its face, and you can bring out to the jury anything you wish by cross-examination or by your own witnesses.

The Court: Do you object to the contract?

Mr. Leibowitz: I don't object to the contract itself.

The Court: Very well, it may be received in evidence.

(Whereupon, said Plaintiff's Exhibit No. 2, being a contract, offered and received in evidence, is a part of this record.)

Mr. Lamb: I will read the material portion. There is a lot of fine print. Is there any objection to the reporter not taking it down?

Mr. Leibowitz: I don't.

Mr. Eickemeyer: It may be considered as read and used by either side; may it be stipulated?

Mr. Lamb: Yes, as far as I am concerned, without the court reporter taking down the complete reading if that is satisfactory to the court.

(Testimony of Lt. Harvey B. Apperson.)

The Court: It is and the counsel seem to be satisfied.

Mr. Lamb: I will read the material portions.

(Mr. Lamb read Plaintiff's Exhibit No. 2.)

Direct Examination

(Continued)

By Mr. Lamb:

Q. After the acceptance of the bid of which Exhibit 2 is a copy what was your first connection with the defendant, Meyer Schneider?

A. My first personal contact with him was when, on November 15th a telephone call came in to Private Walker, who was then a clerk in my office. I found out that it was a call from New York and presumed that it was from Schneider and I wanted to talk to him and tell him to remove this stuff and I took the telephone away from Walker and explained to him, explained to Schneider that since I was the Salvage Officer any transactions would have to be handled through me.

Q. How did you know you were talking with the defendant Meyer Schneider?

A. He said he was Meyer Schneider.

Q. And what was the conversation which you and the defendant Meyer Schneider had at that time by long distance telephone?

A. Well, I explained to Schneider that under the terms of the contract he was supposed to remove the material he had bought from the Base within

(Testimony of Lt. Harvey B. Apperson.)

ten days and pointed out that section of the paragraph and explained to him he was a good bit overdue and we needed the space and he would have to [61] pick up the material as soon as possible because we needed the storage and warehouse space. Schneider then explained to me that, I can't remember just exactly what he gave as a reason for not picking it up, but he did explain he would be out to Montana the following Monday.

Q. Do you recall what date it was he was to appear here in Montana?

A. I think it was, no, the 16th or the 17th.

Q. It was along sometime about the middle of November, 1948?

A. That is right, about the middle of November, 1948.

Q. What date then did—or did you have any further conversation with Meyer Schneider?

A. Yes. I think he was supposed to arrive the following Monday. The following Tuesday he hadn't got to Great Falls so I called him long distance collect and explained to him that if he did not come out and pick up and remove the material I would cancel his contract and I would forward to him by registered mail a notice that the contract had been cancelled and that we would also make, that he would forfeit his deposit and the necessary charges to be made against him. In other words, what it would cost the Government to dispose of the material. He stated he would arrive in Montana on

(Testimony of Lt. Harvey B. Apperson.)

the 21st, I think, of November, 1948; that would be on a Sunday. I explained to him that I had other duties at the time and [62] asked him if he would arrive Monday or that I would talk with him Monday; that would be November 22nd, 1948. He said he would come out and he had other things to talk to me about.

Q. That he had other things to talk to you about? A. Yes.

Q. Were there any other calls to the office during that period from New York City?

A. On the first telephone call the afternoon of the 15th of November, 1948, a long distance telephone call came to my office to Private Walker, I think, or to Walker, that would be the telephone operator expressed it herself, and I took the telephone and said this was Lieutenant Apperson, the Salvage Officer; the party on the other end wouldn't talk to me.

Q. So there was no—how long was that after you had taken the phone away from Walker and had talked with the Defendant Meyer Schneider?

A. Oh, an hour or hour and a half.

Q. And then did the defendant Meyer Schneider come to Great Falls on the 21st or 23rd of November, 1948, and contact you?

A. I had a telephone call from him on the morning of the 22nd of November, 1948, to arrange a meeting. I explained to him that I was Officer of the Day and had other duties and could not meet him

(Testimony of Lt. Harvey B. Apperson.)

until approximately ten or ten thirty or [63] somewhere thereabouts.

Q. And was there any other conversation with him over the phone other than making an appointment for a subsequent meeting at the Airbase?

A. Not that I remember of, no.

Q. And what at the time if anything was said—did you wait for him to come to the Airbase?

A. I told him that I would meet him at the main gate between ten and ten thirty.

Q. And did you meet him at the front gate between ten and ten thirty on November 22, 1948?

A. No, I had other duties being Officer of the Day so I sent my assistant, Sergeant Aulgur to meet him at the gate.

Q. Well then about when was it that you first saw and met with Meyer Schneider, the defendant?

A. I met him in my office approximately ten thirty on the 22nd.

Q. And who else was present at that time?

A. Sergeant Raymond Aulgur and Tech/Sergeant Christianson were both in my office when I arrived and Schneider was in my office.

Q. And did you meet Meyer Schneider who sits here at the table now? A. Yes.

Q. And that is the man that came to the airbase? A. That is Meyer Schneider. [64]

Q. And then on the morning of November 22, 1948, was there surplus usable property visible to anyone in the office at that time?

(Testimony of Lt. Harvey B. Apperson.)

A. Yes, we had material stacked all through the building. We had been recently moved and due to Virtuals Operation and the office space was awfully small and we had to move to the smallest place possible. It was visible.

Q. And were they all piled up in one pile or what was the condition?

A. Mattresses in a pile, shirts in another pile, trousers in another, boots in another, and various other items of equipment, broken tools, and so forth in another; quite a few piles.

Q. Were any of those piles extending from the back of the warehouse through and were any of those piles in the office itself?

A. Oh, yes, I could touch them from my desk.

Q. And they were within sight of the defendant, Meyer Schneider, when you first came into the office?

A. They were.

Q. Between ten and ten thirty on November 22, 1948, is that correct?

A. They were.

Q. And what conversation did you have with the defendant Meyer Schneider on the morning of November 22, 1948, when you first met him? [65]

A. Well I introduced myself and he said he was Meyer Schneider. We walked back into the back of the warehouse. First he asked me if I had any other merchandise other than what he had bought. Well we walked back into the rear part of the warehouse and I showed him the piles of shirts, trousers

(Testimony of Lt. Harvey B. Apperson.)

and so forth, and then he asked how he might get hold of some of them.

Q. And what did you tell him?

A. I explained to him I had no authority to make spot negotiations or retail sales and the only way he could obtain them would be to submit his bid by invitation the same as anybody else and that he would have to bid and be in competition with anybody else.

Q. Now for the benefit of the court and the jury what is a spot sale as you designated it?

A. Well a spot sale is where I would be given authority by the Commanding General of the Air Material Command to decree a sale to an individual where he would pay me for the material, take the material and haul it away, and I would, of course, turn in the money to the Finance Office.

Q. And you had explained at that time to Meyer Schneider that you did not have that necessary authority?

A. Very carefully explained it to him I had no such authority.

Q. All right, what further conversation did you have [66] with him?

A. Then he wanted to know if maybe we could swap or get together. I then didn't commit myself much one way or the other. Then I asked him if he would like to see the stuff he had purchased.

Q. Well what did you and he do?

A. We drove from that office to the salvage yard which is where we keep all scrap material.

(Testimony of Lt. Harvey B. Apperson.)

Q. As I understand it for the matter of location the salvage yard is at the far east end of the Air-base and the salvage office nearly at the west side of the Base as far as the buildings are concerned?

A. That is right.

Q. And you drove from the Base salvage office then over to the salvage yard?

A. That is right.

Q. Where were the materials which Meyer Schneider had secured by way of the written bid?

A. They were located in a warehouse inside the salvage yard.

Q. In other words, a fenced area with building inside?

A. Fence area, yes, with building inside.

Q. Then as I understand it you and Meyer Schneider rode in your car to the salvage yard adjacent to the building where his property was located?

A. That is right.

Q. All right, did you at that time have any further [67] conversation with the defendant Meyer Schneider?

A. Yes, he wanted to get together with me or trade some of the scrap that he had legitimately purchased; he wanted me to substitute some of the useful items for this scrap, and he went on to say that he would take any amount and that he would give me, said he would give me half a quid to a couple Gs, and he further said "I have got the money right here" and slapped his brief case to indicate he had a couple Gs to take care of me.

(Testimony of Lt. Harvey B. Apperson.)

Q. And what did you tell him?

A. I indicated then I didn't want to have any part of it. I said more or less "Let's go and see what stuff you have got."

Q. Then was there any further conversation in the car before you got out and went into the warehouse?

A. No. He did say something about this is not the only way you can, there was quite a bit of money to be made on this sort of business, in that fashion.

Q. Then what did he and you do?

A. We got out and went into the warehouse and I showed him the scrap cotton, cotton rags and so forth, and he looked at the stuff and more or less shrugged and said "I can't make a fishcake on this sort of stuff."

Q. All right, after Meyer Schneider said he decided he couldn't make a fishcake on that kind of stuff, where did you go? [68]

A. We drove from the salvage yard to the coffee shop to the rear of the hangars or other end of the Base.

Q. On the west end of the Base somewhere near the Base salvage office?

A. No, it is entirely in the opposite direction.

Q. And did you go into the coffee shop with him? him?

A. Yes, I drove my car to the coffee shop.

(Testimony of Lt. Harvey B. Apperson.)

Q. Did you have any further conversation with him at that time?

A. Well on the way up there to that coffee shop he said that a deal like that would be easy enough to cover. He acted that he knew all about how records were kept and had quite a knowledge of the Quartermaster operations and said a deal like that would be easy enough to cover.

Q. Then after you were at the coffee shop then what did you and he do?

A. We went into the coffee shop and got a cup of coffee and at that time Schneider began to tell me about how he operated at other bases and that he explained to me he operated quite a bit at a large depot down south and very carefully avoided telling me where that depot was. He said that he had dealt quite often through salvage agencies and at that time I think he said something about a cousin or somebody that had been in the Quartermaster Corps during the war, that wasn't material the conversation at the time. I [69] told him, well, I was very non-committal, I didn't say one way or another. By that time it was about 11:15 or between 11:30, and I had been Officer of the Day and up the night before and I went into the commercial transportation office where I could get a telephone and call a taxicab for Schneider.

Q. Well did Meyer Schneider leave the Base then as soon as his taxicab arrived?

A. Yes, he left, and I *asked* over to the Officer

(Testimony of Lt. Harvey B. Apperson.)

of Special Investigation and reported to him that an attempt had been made to bribe me.

Q. And that was immediately following the time that Meyer Schneider left? A. Yes.

Q. All right, after making this report to the Office of Special Investigation that an attempt had been made to bribe you, who was the officer you reported that to?

A. I reported it to Captain Brynildson.

Q. And what did you and Captain Brynildson do?

A. Well Captain Brynildson called Mr. Jack Matthews of the F.B.I., who made an appointment with us about two o'clock that afternoon, one thirty or two o'clock.

Q. Well then what did you and Captain Brynildson do?

A. We came down—we had lunch at the Officers' Club and then came down town and met Mr. Matthews.

Q. And where did you meet Mr. Matthews? [70]

A. In the Federal Building here in the F.B.I. office.

Q. And what took place at that time?

A. We explained and I reiterated—

Mr. Lebowitz: I object to what took place in the absence of the defendant between Mr. Apperson and the F.B.I. Agent.

Mr. Lamb: I will withdraw the question, your Honor.

(Testimony of Lt. Harvey B. Apperson.)

Q. All right, after you met with Mr. Matthews and Captain Brynildson in the F.B.I. office what did you do?

A. I indicated my willingness to cooperate in any way I could and then Mr. Matthews told me——

Mr. Lebowitz: I object to that——

Mr. Lamb: You can't testify to what Mr. Matthews told you.

The Court: No conversation without the defendant present.

Q. (By Mr. Lamb): Then what did you do after that?

A. I went home and went to bed after that.

Q. You had been up all night? A. Yes.

Q. Then the next day what did you do? That would be November 23, 1948, in the morning?

A. I went to work as usual and worked from about eight to ten when Mr. Matthews contacted me again.

Q. And after Mr. Matthews had contacted you what did [71] you do and Mr. Matthews do, if anything?

A. We went to see Colonel Chennault, who was the Base Commander, in company with a Colonel Abdalah, who was the Staff Judge Advocate, that is the legal. We went to Colonel Chennault and I explained to the Commander just what had happened and ask him his permission to cooperate with the F.B.I.?

(Testimony of Lt. Harvey B. Apperson.)

Q. And did you secure that permission?

A. Yes, he signed it then in writing directing me to cooperate in any manner and do anything they told me within reason, of course.

Q. And after consultation with the legal adviser or the Airbase and the Commanding Officer, Colonel Chennault and Mr. Matthews, what did you do?

A. Well I had previously arranged an appointment with Schneider at around two that afternoon.

Q. And that was on the afternoon of November 23, 1948?

A. That is right.

Q. Did you meet with the defendant Meyer Schneider at about two o'clock on the afternoon of November 23, 1948?

A. Yes, I first met Meyer Schneider up at the main gate in my automobile and drove him to the salvage office.

Q. That is the same United States Air Force Base adjacent to the city of Great Falls?

A. Yes, that is correct. [72]

Q. All right, did you have any conversation with the defendant en route from the gate to the Base salvage office?

A. I don't remember any conversation at all.

Q. And when you arrived at the Base Salvage office who was there?

A. Sergeant Christianson and Sergeant Aulgur.

Q. And where were they with reference to where you and Meyer Schneider was?

A. I remember Sergeant Aulgur was on the right about ten feet away behind a desk; I don't remem-

(Testimony of Lt. Harvey B. Apperson.)

ber where Sergeant Christianson was; I am sure he was in the office though.

Q. Was the office a large office or rather small?

A. No, it is rather small.

Q. Mainly occupied by desks and filing cabinets and narrow aisles, is that correct?

A. Narrow aisles.

Q. Was it possible for anyone sitting at any of the desks in the office to hear normal conversation carried on at any of the other places?

A. Oh, I think you could hear anything that was said, it was that small.

Q. All right, then what took place?

A. I pitched a jacket file in front of Schneider; that jacket file contained a complete list of the useful items, useful salvage items that we have in storage as salvage at [73] that time.

Q. Did you say anything at that time?

A. No.

Q. What did Schneider do when you laid the jacket file on the desk?

A. He opened it. I did indicate to him or point to the total value, that is the original purchase price to the Government. I pointed to that. Schneider shook his head and then shook his head and indicated that was accepted.

Q. And was there any, did he say anything at that time?

A. No, I can't remember that he did say anything.

(Testimony of Lt. Harvey B. Apperson.)

Q. Did you say anything at that time?

A. No.

Q. All right, then what transpired?

A. I explained to Schneider then that he would have to pay my boys or my enlisted men for loading the stuff and it would have to be loaded after hours because as the terms of the contract he is supposed to move the materials as is where is.

Q. What do you mean by after hours?

A. In other words, we work enlisted men from eight to five and after five, of course, that is their time so it is more or less overtime and I explained to him that he would have to pay them. However, I did make an exception then and started them to work a little earlier. [74]

The Court: We will take a recess for fifteen minutes.

(2:55 p.m.)

(The court resumed, pursuant to recess, at 3:10 o'clock p.m., at which time the jury, defendant and all of the counsel were present.)

(Lt. Harvey B. Apperson resumed the stand.)

The Court: Proceed:

Q. (By Mr. Lamb): Lieutenant Apperson, what was the condition out at the Airbase on November 23, 1948, as far as available labor was concerned for civilians as far as to load freight cars on the Airbase with property they had purchased?

A. Well, there was no labor and the only way Schneider would have been able to get labor would

(Testimony of Lt. Harvey B. Apperson.)

be to come down town and negotiate it, and at that time labor was pretty hard to get and I told him my boys would load the stuff and he would have to pay them to do so because it would be after duty hours and part of it would be after-duty hours.

Q. And was it part of the duties of the men in your office or in your command to load material for civilians who might purchase property?

A. No.

Q. Any services then rendered by any military personnel would be entirely voluntary upon their part? [75]

A. That is right and Schnieder would have had to have paid them for that labor.

Q. And you advised him of that situation?

A. That is correct.

Q. Discussed between the two of you?

A. It was.

Q. And was that arrangement satisfactory with him?

A. Yes, he said that would be satisfactory to him and turned to Sergeant Aulgur and told him to get the necessary labor and the necessary people.

Q. All right, then what was done, what took place?

A. We left the salvage office and went to warehouse No. 1045; that is where I had quite a large amount of salvage clothing. Sergeant Aulgur in the meantime had obtained a truck. Schnieder said to Sergeant Aulgur to be sure and load the

(Testimony of Lt. Harvey B. Apperson.)

stuff that we got out of 1045 in the bottom of the freight car and then load the rags on top. We went to the freight car and started loading the clothing which was put up in cartons into this truck to haul to the freight car.

Q. Now, as I understand it what class of material was in warehouse No. 1045 where they started loading the materials from?

A. They were all useful items.

Q. And can you recall now of what they consisted?

A. There were parkas, obsolete parkas, shirts, trousers, [76] what they call blucher boots, a few McClellan saddles, but mostly shirts, trousers, and also R.O.T.C. blouses not useful to the Air Force because they had blue lapels and olive drab bodies.

Q. Field jackets?

A. Field jackets; and all kinds of things like that.

Q. And how much of that, those useful articles were stored there, was there a warehouse full or half full?

A. Oh, it was almost a warehouse full.

Q. And when the truck had been brought to the warehouse 1045 by Sergeant Aulgur and the other men whom Schneider had employed, what did Schneider do while the materials were being loaded upon the trucks, if anything?

A. Well, he more or less supervised the loading and noted on a piece of paper how many shirts were in each carton and so forth.

(Testimony of Lt. Harvey B. Apperson.)

Q. And each carton or bundle or box contained a notation thereon of the number of articles in it?

A. That is right.

Q. And as to the first load the defendant Meyer Schneider stood there and listed the articles that had been put on the truck?

A. That is true.

Q. When the truck was loaded then what did you and Meyer Schneider do, if anything? [77]

A. We followed the truck down to the freight car and watched the men unload it into the freight car.

Q. And then after the first load was put into the car then what did you and Meyer Schneider do?

A. It was either the first or the second load I received a call from the Air Provost Marshal to call the Provost Marshal and it turned out that telephone call; they were wondering what to do with some abandoned property.

Q. It had nothing to do with this particular transaction? A. It had nothing to do.

Q. When you received the call from the Provost Marshal office what did Meyer Schneider do?

A. To the best of my knowledge he stayed there and kept note of everything that went on the truck.

Q. Then did you rejoin him? A. Yes.

Q. And approximately how many loads of material were taken from warehouse 1045 and put into the freight car there at the Airbase?

(Testimony of Lt. Harvey B. Apperson.)

A. I would say about five or six but I am not exactly sure.

Q. About what time in the afternoon did the loading start?

A. Between two-thirty and three-thirty, somewhere around there. [78]

Q. And about how many soldiers were engaged in the loading and unloading of the material?

A. About five.

Q. And during the course of the afternoon then with the exception of the time you received the call from the Provost Marshal's office and left him for a few minutes were you together with him all of the time on the trips back and forth from the warehouse to the car? A. Yes, I was.

Q. And during that time did you have any conversations with the defendant Meyer Schneider?

A. Not that I can remember exactly. Nothing of any importance; he was awfully interested in chino shirts, that was about the main thing.

Q. At that time did he discuss with you the extent of his business in New York City?

A. No, that wasn't until later.

Q. And did he have any discussion with you about further activities at other depots?

Mr. Leibowitz: I object to it as wholly irrelevant and immaterial and incompetent.

The Court: I think so. It had nothing to do with this transaction. I will sustain the objection.

Q. How long did the loading go on that you and

(Testimony of Lt. Harvey B. Apperson.)

Meyer Schneider continued to watch and note the items? [79]

A. Oh, about four thirty.

Mr. Leibowitz: I object to it unless it is responsive to a question. I don't know; it did not seem as if it is going to be responsive to that question anyway.

The Court: Well what was the question, and what did the Lieutenant understand by it?

(Question read.)

Q. How long did the loading go on that you and Meyer Schneider continued to watch and note the items?

A. Until about six o'clock, with the exception of another time that I was away that we left the loading that I just recalled.

Q. And did Meyer Schneider go with you when you left the loading on this second occasion?

A. That is right. We went to the purchasing and contract office where he paid for the scrap that he had legitimately purchased.

Q. And who was the purchasing and contracting officer at the Air base at that time?

A. Captain Greene, who was then a First Lieutenant.

Q. And did you accompany Mr. Schneider to the purchasing and contracting office while he paid for the articles which he had legitimately purchased?

A. Yes, I did.

Q. And were you there with him during all that transaction? [80]

(Testimony of Lt. Harvey B. Apperson.)

A. During the complete time, yes.

Q. And did he at that time offer to pay to Captain Melvin Greene, who was then Lieutenant Greene and the purchasing and contracting officer at the Airbase for the materials which had been removed from the building 1045 and was being placed in the freight car? A. No.

Q. And did he at that time or at any other time to your personal knowledge pay or offer to pay to the purchasing and contracting officer for the materials which were taken out of building 1045?

A. No.

Q. On purchases of surplus and salvage property at the Great Falls Airbase in November, 1948, to whom were all payments to be made?

A. To the purchasing and contracting officer.

Q. Did you have any authority at any time during the month of November, 1948, to accept money payments for any surplus scrap or salvage property of the United States Government that would be removed from the Air base or the control assumed by any purchaser or any other person?

A. I did have authority to sell scrap lumber, but specifically scrap lumber and only scrap lumber.

Q. Did you have any authority at any time during the month of November, 1948, to accept money in payment of any [81] scrap or surplus property of the United States Government, the property consisting of overcoats, parkas, field jackets, blucher boots, or any clothing item? A. No.

(Testimony of Lt. Harvey B. Apperson.)

Q. To whom were all payments required to be made for any such items during that month?

A. To the purchasing and contracting officer.

Q. Who was then Lieutenant Greene?

A. That is right, it was then Lieutenant Greene.

Q. While at the purchasing and contracting office what did the defendant Meyer Schneider do?

A. He went into his brief case and got out certified checks payable to the Treasurer of the United States, if I remember correctly, and also he asked for, he asked how the bids were going and what return were we getting and somebody in the purchasing and contracting office gave him a copy of an abstracted bid from a previous sale which Schneider copied; it also mentioned who the bidders were and pertinent information.

Q. Did the defendant in your presence make an abstract of the bids that had been upon all of the items which had been offered on the invitation to bid?

A. He made notations of an invitation to bid. I don't know if it was this invitation or not but he did make notes on a paper and copied the amount they had bid and the name of [82] bidder.

Q. I will show you a slip of paper marked Plaintiff's Exhibit 3 and ask you if that is the abstract of the, which was prepared by the defendant, Meyer Schneider, in the office of the purchasing and contracting officer when making payment for the commodities which he had legitimately purchased?

(Testimony of Lt. Harvey B. Apperson.)

A. Yes, this is it.

Q. And referring to the reverse side of this particular Plaintiff's Exhibit 3 were any of the items placed which you now find on the back of that placed at that time by the defendant, Meyer Schneider, in your presence?

A. They weren't placed on this paper that I know of; however this looks as though it is a list of stuff we loaded.

Q. Did you see him place that on there at that time? A. No.

Q. After the defendant had copied the abstract of the various bids at the purchasing and contracting office what did he and you do?

A. We went back to building 1045 where they were still loading, finished up that and then went to the salvage yards.

Q. At the time you went to building 1045 and finished the loading what commodities were left if any, in the building at that time?

Mr. Leibowitz: Which building was that?

Mr. Lamb: 1045. [83]

A. Some aircraft tires, McClellan saddles and quite a number of aircraft instruments, oil pressure gauges and so forth.

Q. Did the defendant leave any clothing or shoes or anything of that sort in the building?

A. No.

Q. Everything had been removed with the exception of the McClellan saddles and some tires?

(Testimony of Lt. Harvey B. Apperson.)

A. That is right.

Q. And some other aircraft material?

A. In another part of the building there were some personal items belonging to a Major that was stored there and those were left.

Q. But all of the surplus clothing material had been moved out? A. That is correct.

Q. Lieutenant, from your records do you know the unit or the cost to the United States Government of the material which were moved from building 1045 and put into the freight car in question?

A. \$36,000 and some dollars. I don't know exactly but I know it is about \$36,000, \$36,050, or sixty.

Q. And that was the cost of those items?

A. To the Government.

Q. And as I understand it, after building 1045 was [84] emptied then you went to the salvage yard with the defendant, Meyer Schneider?

A. That is correct.

Q. And what took place there?

A. We supervised two loads of scrap and during the course of this Schneider told me of, well, he was interested in shoes and wished he had to bid on those shoes; also told me he had a very large market for any useful items in the way of uniforms, shoes and so forth in Berscha, Syria. He also explained to me, the gist of the conversation was that the aircraft that were stored in New Mexico——

Mr. Leibowitz: I object to the answer. I object to the question on the ground it is wholly immaterial

(Testimony of Lt. Harvey B. Apperson.)

to the matters in the indictment and which cannot prove any offense in the indictment at all, and it was done after the act of the loading of the merchandise; I think the thing is over.

Mr. Lamb: The question, your Honor, was what took place in the building in the salvage yard.

The Court: I think any conversation between them that refers some other matter has no connection with this is not relative to this case, this charge here. I will sustain the objection as to that. What is it, something in New Orleans?

Mr. Lamb: I agree with you as far as the airplanes is concerned. Much of this evidence of the activities in other Army Depots is being offered for the purpose of showing that [85] the defendant well knew the transactions.

The Court: Well you have already shown his familiarity in this business that he is engaged in; he has dealt with other salvage bases and stations but when it comes to anything that hasn't any bearing on or legal connection and unconnected entirely with this transaction, and Mr. Leibowitz's objection to that is sustained.

Mr. Leibowitz: May I have the answer stricken out?

The Court: Yes, as far as New Orleans or anything going on down there; was it New Orleans?

A. No, sir, New Mexico.

The Court: All right, it will apply to New Mexico.

Mr. Lamb: How many loads of scrap material

(Testimony of Lt. Harvey B. Apperson.)

Meyer Schneider legitimately purchased were taken from the building to the freight car during the time you were there?

A. Approximately two; however, there were quite a few loads left when we left.

Q. About how many thousand pounds did that legitimate purchase consist of? A. About 16.

Q. Then how long did you and Meyer Schneider stay there supervising the loading of the rags if we may call them that?

A. Oh, I would say half an hour or forty-five minutes.

Q. That was after you returned from the purchasing and contracting office? [86]

A. Maybe an hour and a half, I am not just exactly sure.

Q. Then what did you and Meyer Schneider do then?

A. We left the, well the boys, the men had expressed the desire for some coffee so I obtained a thermos bottle and went to the mess hall with Schneider and left him in the car and went into the mess hall and got this thermos jug full of coffee and called the F. B. I. to keep an eye on me, and then we left there and went back to the salvage yard and gave them the coffee, and drove from there to the main gate, down Second Avenue, north to Third Street, parked on Third Street just on the other side of Central Avenue and went into Murrill's Bar.

Q. The defendant was with you then on all of

(Testimony of Lt. Harvey B. Apperson.)

this trip from the Air Base down to across, down Second Avenue and across Central Avenue where you parked near Murrill's Bar?

A. That is right.

Q. And had the car been completely loaded at that time? A. No.

Q. And where had the rags, the legitimate purchase been put with reference to the, all of the boxes and cartons which had been taken out of building 1045 in the freight car?

A. They were placed in the freight car on top of those cartons.

Q. And when you went into Murrill's Bar what took place there?

A. I sat with Schneider and had a couple of drinks. I [87] left Schneider and went into the men's room and shortly after I had gotten into the men's room Mr. Matthews of the F. B. I. came in and searched me and after that search I went back out and met Schneider on the way in and went and sat down and waited for him.

Q. And then did the defendant, Meyer Schneider, come out of the men's room in Murrill's Bar and rejoin you? A. Yes.

Q. After he rejoined you what did you and the defendant do?

A. We came out of Murrill's and went back to my automobile where he got his brief case.

Q. Where the defendant got his brief case?

A. Yes.

(Testimony of Lt. Harvey B. Apperson.)

Q. Had he had this brief case with him during the course of the day?

A. Yes, I don't think I saw him without his brief case.

Q. And after the defendant got his brief case out of your car then what did you and he do?

A. We walked down Central Avenue to the Park Hotel.

Q. And by the way during the time you were in Murrill's Bar was your automobile locked or unlocked? A. It was locked.

Q. You walked down the street to the Park Hotel and when you got to the Park Hotel what did you and the defendant do [88] if anything?

A. We went up to his room. I expressed the desire for another drink and he said he had some good scotch so we went to his room.

Q. To what room in the Park Hotel in Great Falls, Montana, did you and the defendant go?

A. Room 340.

Q. 340? A. Yes.

Q. And when you got in room 340 with the defendant, Meyer Schneider, will you just tell us what took place?

A. We sat down and he called room service and asked for some ice and soda. He started talking about a claim he had submitted through——

Mr. Leibowitz: I object to that, your Honor. I don't think it has any relevancy to the case at all.

(Testimony of Lt. Harvey B. Apperson.)

The Court: I don't know. I have no idea myself. Let's find out more about it.

A. He started talking then about a claim he had talked about at the salvage yard.

The Court: What claim, Lieutenant? Did that relate to this transaction, purchase out here? What did it relate to?

A. It related to a claim with War Assets that he had submitted with War Assets.

The Court: Was it against War Assets? [89]

A. Yes.

The Court: Claiming a return, was he?

A. Yes.

The Court: From property purchased elsewhere? A. Yes, sir.

The Court: At some other Army Base?

A. No, sir, I think this was purchased through San Francisco War Assets.

The Court: Well I don't know this was a matter that had anything to do with this case, conversation relating to it; it might eventually turn out there is something more.

Mr. Lamb: I have no reluctance, your Honor, to go on to other matters, if that is the defendant's wish.

The Court: I think the law is if there has been some other offense or anything of that sort committed, some illegal act, and it is connected with the one under consideration the basis of the charge, then it might be admissible under the circum-

(Testimony of Lt. Harvey B. Apperson.)

stances, some transfer or some conversation but wholly unconnected with this present charge—now that is my understanding of the law on that.

Q. (By Mr. Lamb): Then Lieutenant, will you go on and just relate what took place up there and not relate any conversations or part of the activities he might have been engaged in?

A. He started talking about paying off or paying me what [90] he had promised and then he stopped and said, "wait until after the bellhop gets here." So we had further conversation and he waited until the bellhop came and we had a drink and then he reached under his bed and removed a bag, a traveling bag where he took out a large stack of tens and twenty dollar bills and counted out fifty twenty dollar bills and fifty ten dollar bills, handed it to me, and with this counting he explained to me he always carried it in small denominations.

Q. Did he first offer you the \$1500?

A. No.

Q. The fifty twenty dollar bills?

A. First he said, "I will give you \$1400."

Q. And what did you do or say?

A. Well I was dissatisfied.

Q. Did you say anything?

A. I didn't say anything.

Q. And then what did he do or say if anything?

A. He counted out fifty twenty dollar bills and fifty ten dollar bills, handed it to me and said, "Here, count this."

(Testimony of Lt. Harvey B. Apperson.)

Q. Did you? A. Yes, I counted it.

Q. And how much money was there?

A. There was \$1500.

Q. All right, and what did you do?

A. I asked him if I might have an envelope. It was [91] quite bulky. He reached into his brief case and took an envelope out and handed it to me. I didn't notice much about the envelope at the time but I did notice it had his letterhead on it. He handed me this envelope and I put the \$1500 in the envelope and sealed it and placed it in my left breast pocket.

Q. And then after the defendant had given you the \$1500 and you placed it in the envelope and sealed it and put it in your pocket then what did you do?

A. Oh, I had further conversation with him for maybe five, ten minutes and then left and got on the elevator and got downstairs where I met Mr. Matthews; I handed him the envelope with the money in it.

Q. Now, did any of these conversations which, concerning which you have been limited in relating, did any of these conversations which you had with him at that time relate to the, his securing this property out of the Air base and the payment to you of the \$1500?

A. He did say that this wasn't the last deal we hoped to have. He said he would like to have more dealings with me and went on to say if I ran into any-

(Testimony of Lt. Harvey B. Apperson.)

thing or ran into something that he might be interested in not to hesitate to call him collect at his New York address.

Q. And then you left the room and went down the elevator and handed the envelope to Mr. Matthews? [92]

A. That is correct.

Q. I show you an envelope marked Plaintiff's Exhibit 4 and ask you if that is the envelope which was given to you by the defendant, Meyer Schneider, in which you put the \$1500 which he gave you and which envelope you delivered to Jack Matthews as soon as you had left the defendant's room?

A. This is the envelope with the exception of a flap and my signature appears on the back.

Q. It was unsealed at the time the envelope was given to you and now the flap which seals the envelope is gone, is that correct? A. Yes.

Q. But outside of that is the envelope in the, substantially the same condition it was except for the signatures appearing on the rear thereof?

A. Yes, to the best of my knowledge.

Q. And this bears your signature upon it, the back, does it not? A. Yes, it does.

Q. And when did you place your signature upon the envelope?

A. I placed that on there when I came back to the F. B. I. I think prior to opening it or right after.

Q. And in whose presence was the—is this the flap that fits your notations on the back?

(Testimony of Lt. Harvey B. Apperson.)

A. Yes.

Q. Is that the envelope with the exception of now being opened is the same as when you delivered it to Mr. Matthews except at that time it had the \$1500 in it, is that correct? A. That is correct.

Q. And after you had handed the envelope to Mr. Matthews what did you do?

A. Mr. Leonard—I didn't know it was Mr. Leonard at the time—I later found out—got me and we went into the men's room and he searched me again.

Q. Then when did you see the defendant again?

A. This is the first time, since then.

Mr. Lamb: You may cross-examine.

Cross-Examination

By Mr. Leibowitz:

Q. Lieutenant Apperson, you say, you testified that you came to the Great Falls Air base sometime in 1948, in April, I think—is that true?

A. Yes.

Q. And when you reached the Great Falls Air base you were not acting in the capacity of salvage officer then, were you? A. No.

Q. Your duty was what?

A. I was Port Control Officer. [94]

Q. And there is no relationship between the base salvage officer and port control, is there?

A. No.

Q. The duties are entirely distinct?

(Testimony of Lt. Harvey B. Apperson.)

A. That is correct.

Q. At the time you came to the Great Falls Air base some other individual officer or Army man was functioning as air base salvage officer, is that true?

A. That is correct.

Q. And when you were assigned to act as Air Force base salvage officer you acted in conjunction or with the other individual or to supplant the other individual? A. I replaced him.

Q. You replaced him completely? A. Yes.

Q. And that took place some time in July, 1948?

A. July or August.

Q. Now, when you were assigned and replaced the other officer I suppose you received or did you request a manual setting for the duties and functions of an Air base salvage officer?

A. There was a manual in the office.

Q. That wasn't specifically given to you, was it, by any particular individual or officer?

A. No.

Q. You simply found it there? A. Yes.

Q. And did you examine that manual?

A. Yes.

Q. Well, how far did you go as far as the examination of the manual itself; did you examine it from cover to cover? [95]

A. I read the pertinent parts. There are some parts that are reference.

Q. That part you deemed pertinent to your duties, is that so? A. Yes.

(Testimony of Lt. Harvey B. Apperson.)

Q. And of course you didn't read the entire thing, as you say? A. No.

Q. Now, you were shown Plaintiff's Exhibit 1, a manual and you were asked if that was the very same manual that was similar or the same one that you found—I will withdraw that question.

A. That is not the same manual.

Mr. Leibowitz: I will withdraw that question and reframe my question.

Q. Now this manual which is marked Plaintiff's Exhibit 1 and shown to you by Mr. Lamb is a manual that you have seen today for the first time, is that true, this particular one?

A. That I don't know. That may be the same one. It may be. There are thousands of them printed.

Q. And is there anything you can identify from the cover or any particular page or any reference made therein as to whether or not that is the same manual that you seen and you have read the pertinent portions of in the office at the air base?

A. That is a similar manual. [96]

Q. And similar, that is as far as you can go?

A. That may be the 50th copy that came off the press or it may be the 1000th.

Q. By similar, in what respect are they similar?

A. That means the information contained in that manual is exactly the same as the one I assumed custody of.

Q. When you say assumed it is the very same

(Testimony of Lt. Harvey B. Apperson.)

thing; you didn't read it, did you? You certainly didn't read it today?

A. Not that parictular one, no.

Q. Mr.—Lieutenant Apperson—if I sometimes make a mistake and say “Mr.” it is because I am not familiar with calling you Lieutenant. As in the manual that you have seen at your base is there any reference to the disposal of salvage material?

A. Yes.

Q. And is it your duty as an air base salvage officer to prepare the merchandise for invitations to bid?

A. As far as segregation, yes.

Q. In other words, what you mean by segregation is this, and if I am wrong you say so; that you receive in your warehouse a certain number of materials, mixed Army materials, and what you do then is to grade them into pants, jacekts, socks, etc., is that true?

A. It might be better if I explained what I do.

Q. Go ahead.

A. I receive material classified in two classifications, [97] either useful items or scrap. Now in the event that some items are classified as scrap I up grade those to useful items; however, I cannot down grade useful items to scrap without making proper paper work and so forth.

Q. In other words, the first function that you have when you receive material from some source at the air base is to separate the useful and the un-useful merchandise, isn't that so?

(Testimony of Lt. Harvey B. Apperson.)

A. I have never received those things mixed up.

Q. You don't receive them?

A. Never received them mixed up.

Q. In other words, they were separate as you received them? A. They were.

Q. What do you mean by segregating them?

A. I segregate in the case of scrap. I may get some cases would be B-29, so many parts, brass, lead, aluminum; there is what I mean by segregation as to ferrous and non-ferrous.

Q. Now your base salvage activities is not confined solely to textiles? A. No.

Q. It includes everything that may become scrap at the air base? A. That is right.

Q. Including B-29s? A. That is right.

Q. When you receive the useful materials at your place you mean useful in what respect? [98]

A. I mean that with very little repair they can be used again, not to the service but they can be used.

Q. As far as the service is concerned it is unusable?

A. Not usable. It might be used again but not for service.

Q. And you offer those out for sale?

A. That is correct.

Q. And in the very same fashion as the scrap is offered? A. Not in every case, no.

Q. I mean as far as the preparation of invitation to bid and as far as the contract is concerned?

A. Not in every case, no. Sometimes we put it

(Testimony of Lt. Harvey B. Apperson.)

up on large invitations to bid, sometimes we put it in small lots.

Q. I see, but whether you put it up to large invitations or small ones the procedure followed is practically the same? A. Practically.

Q. And of course you as an air base salvage officer are very much interested to see that you have a lot of bidders bidding on this merchandise?

A. That is correct.

Q. And would you say to that Mr. Lieutenant Apperson is that your function?

A. Partially, yes. I maintain a listing and there is also a list of bidders published by the Air Materiel Command.

Q. Now if you were to, or at least you testified that there was an advertisement in Waste Trade Journal, I think; [99] do you recall that, inviting people to bid on this merchandise? Do you recall you testified to that?

A. I don't know whether there was one in that periodical or not.

Q. If there had been one you had no connection with the advertisement of it? A. No.

Q. It was done by someone else? A. Yes.

Q. Whom do you think would be that someone else?

A. I presume it would be Lieutenant Greene.

Q. Lieutenant Greene?

A. Or the Air Materiel.

Q. In other words, besides yourself there are

(Testimony of Lt. Harvey B. Apperson.)

other, two individuals who have some control in the disposition of the sale of salvage material?

A. That is right.

Q. Do you have to report your activities to Lieutenant Greene and to the other individual that you mentioned before as to what is going on in your particular place?

A. Not to Lieutenant Greene. I do report to the Ogden Materiel Area.

Q. And what is his name?

A. There isn't an individual; it is a——

Q. Well what office is it?

A. The salvage branch of the Ogden Air Materiel Area.

Q. And is he at the Great Falls Air base?

A. No.

Q. Oh, he is somewhere else? [100]

A. He is at Ogden, Utah.

Q. Now every time that you receive any salvage material at your place do you receive a list of what it contains; in other words, there is a check upon your own activities, isn't there, as far as poundage is concerned? A. I presume so.

Q. Well has it ever occurred that there was a shortage between what you received and what they billed you for, put it that way?

A. I have very carefully counted it.

Q. I said has there ever been a shortage? Have you found the people who billed you for the salvage material had made a mistake?

(Testimony of Lt. Harvey B. Apperson.)

A. Not to my knowledge, with the exception of maybe the misnomenclature or misnamed an item.

Q. And the name sometimes is important too as for its classification as material, depending upon the value?

A. Maybe with the stock number but that is all.

Q. But in any event it was important to you for your own protection to carefully check what you received from them? A. That is right.

Q. For your own protection?

A. That is right.

Q. Did you tag every single bag of material that you received? A. No.

Q. Did you have any particular unit in mind when you [101] prepared these lots say in hundred pound bags or two hundred pound bags or three hundred? A. No.

Q. You didn't? A. No.

Q. Some of the bags may be of higher weight and smaller weight, is that so?

A. Would you elaborate on that? Are you talking about scrap or useful?

Q. I am talking about scrap?

A. They were baled in convenient size bales.

Q. Twenty-five pounds?

A. Maybe twenty pounds.

Q. Did you bale it on your premises?

A. Yes.

Q. It came to you loose, didn't it? A. Yes.

(Testimony of Lt. Harvey B. Apperson.)

Q. And you knew how many pounds there were in that lot? A. Yes.

Q. And then you went ahead and put it up for bids?

A. No, I waited until after it was baled.

Q. But you knew how much you were going to bale in advance? A. Well, see——

Q. Well, for instance, to illustrate. You received say 1,000 pounds of scrap?

A. No, I didn't receive it that way.

Q. All right, put it in your language.

Mr. Lamb: Your Honor, I might suggest if counsel would permit the Lieutenant to answer the question rather than suggesting all these things. Perhaps the Lieutenant can [102] explain it so Mr. Leibowitz can understand it.

A. I receive maybe two socks, maybe three socks, maybe five shirts, maybe five shirts that were in the state of rags that were sent to me as fair wear and tear and they were, maybe in some cases had sleeves ripped off or ripped out or acid on them, and we receive those as is one day, and we take those shirts and bale them up and carry those as pounds of cotton. In cases where wool we carry those as so many pounds of wool. However, if they get into the mixed confusion of rags we don't know what they; they are rags then and carried as pounds.

Q. In other words, you receive them as small units and accumulate them and when you feel there

(Testimony of Lt. Harvey B. Apperson.)

is sufficient amounts to bale up you use your judgment and bale them up? A. Yes.

Q. But in any event the amount of stuff you have on hand is known to some other officials?

A. Well, of course, monthly reports that we send in how much weight we have.

Q. Has it ever happened that your monthly reports did not correspond with the reports they have of merchandise they sent to you?

A. They wouldn't have it by pound because that was a figure I arrived at and I estimated it.

Q. Any time when they said your report isn't accurate or it doesn't correspond with their own reports? [103]

A. Some cases maybe in addition, arithmetic, but not in amounts.

Q. In any events you are checked carefully?

A. Yes.

Q. And you knew you were being checked?

A. Beg your pardon?

Q. You knew you were being checked?

A. Well nobody ever counted or weighed.

Q. But you felt there was some superior officer who was keeping his eyes on those things?

A. I didn't keep account of it for that reason.

Q. Yes, all right. Now we come to the useful materials. Now is, when you receive that do you receive those useful materials the same way—first, you received scrap material?

A. Yes, individual.

(Testimony of Lt. Harvey B. Apperson.)

Q. And when you accumulated what you thought was sufficient quantity you just went ahead and baled it up? A. No, not the useful items.

Q. You handled that a little differently?

A. They were kept as individual items.

Q. Did you sort them to correspond such as, and carry all material, for example, trousers as trousers and jackets as jackets?

A. You mean physically did we pile them?

Q. Physically you piled them that way?

A. Sometimes we did and sometimes we didn't.

Q. Depending on whose judgment?

A. On whose?

Q. Depending on your judgment?

A. On my own.

Q. When you confused or you have placed pants and jackets and some of the other things together were you ever told that you didn't do it correctly or you should do it differently, or out of lack of experience maybe was it ever said to you it might be more profitable for the Government if you went ahead and have kept the pants out of the field jackets or you should put the field jackets and the pants together, etc.?

A. Well that was left more or less to my own judgment what I could do. I had help if that is what you are getting at.

Q. No, I don't mean the help. But, all right, that was left to your own discretion as to that. Now after you accumulated sufficient scrap and sufficient

(Testimony of Lt. Harvey B. Apperson.)

useful material did you recommend to the officer that it is time for it to be sold to the public?

A. At the time?

Q. No, not at that time. I just want to get your——

A. I can't answer the question.

Q. Then answer it anyway you want. Answer it your way.

A. At the time we all know Berlin was blockaded and we were having quite a bit of confusion——

Q. Will you keep your voice up a little bit?

A. We had trouble with the building space. That is because—I had better go into the background of the procedure. We set up lots so that the small business man has a chance to bid on these things. At the time we were short of building space and warehouse space, so they were set up in one big lot, and "Victuals" came along and we were moved time and time again.

Q. Lieutenant, you said "we," now who is the other person?

A. I mean myself and my assistants.

Q. Someone in the warehouse, is that what you mean?

A. Well, my assistants.

Q. Well in the warehouse or just your assistants somewheres outside of the warehouse? We will take Lieutenant Greene, would you call him your assistant?

A. He assisted me. He wasn't actually under my command.

Q. Well that is what I mean by an assistant, did

(Testimony of Lt. Harvey B. Apperson.)

he work under you, did he take orders from you, or was he equal rank of yours or worked in cooperation with you?

A. He worked in cooperation with me.

Q. Did you have to tell anybody that I think we are just loaded up with this merchandise and we are getting crowded and I think we ought to go ahead and offer it out to the public?

A. Oh, yes, that was my duty when we got a sufficient amount of the stuff together where it would make it profitable [106] for a buyer or make it worthwhile we put it out.

Q. I am interested, Lieutenant Apperson—I am not trying to make a mystery out of it. I just want to know what is actually the policy with reference to disposal of the merchandise. So I am not trying to ask any tricky questions. I just want to know. Can you explain it any way to us. If you were the person who determined the time and disposition of the merchandise or would you have to receive instructions from someone else before that merchandise can be disposed of?

A. I told the purchasing and contracting officer when I was ready. I have to work at his convenience too because he has other things to do and many more things and much more business to handle and it is at his convenience as well as mine.

Q. In other words then he acted as veto on your recommendation?

A. I never had to pin him down that hard.

Q. Well I want to know if you came along to

(Testimony of Lt. Harvey B. Apperson.)

him and say, here I think we ought to get rid of this merchandise, and it is piling up and we should dispose of it, and let's assume he said "No," would that be the end of it? Or can you say, I don't care what you say, I have got to have this stuff out because it is crowding up?

A. If I needed the warehouse very badly I would.

Q. Ignore him? [107]

A. I would go over his head. However, he would still have to sit in for the sale because I have no authority to write a contract.

Q. So as far as you can go you can recommend the sale of this merchandise to the public to the procurement officer, say?

A. I can recommend it to the public through——

Q. Through—all right. Now we go into the procurement officer, and in this case, Lieutenant Greene, correct?

A. Correct.

Q. And from that point on he takes over, wouldn't he? Well, as far as setting up the schedules and the amount of stuff that is being offered, you have nothing to do with that?

A. I do only for how much is to be sold and when I want to sell it I come to him and we get together and consider it, and he explains to me when it is convenient, and between the two of us we arrive at a date when the bids are to be opened.

Q. Have you anything to do with the preparation of brochures or pamphlets or anything sent out to the bidders?

(Testimony of Lt. Harvey B. Apperson.)

A. No. Sometimes it depends. I can prepare them or he can prepare them, either one of us.

Q. Now after you have both decided and the pamphlet is prepared and an attempt is made, or at least an effort is made to invite people to bid on the merchandise you have, [108] from that point on you are through, am I correct?

A. With the exception of seeing that the Government gets a fair deal. I can turn down a bid any time I wanted.

Mr. Lamb: Let him answer the question.

Q. I will let you, give you an opportunity to explain that. I don't want to conceal anything. Now, bidders, let's assume after the pamphlet is out people put their bid in, correct? A. Correct.

Q. And along with their bid they send their checks which is required by the contract, true?

A. That is correct.

Q. Incidentally, that contract isn't prepared by you? A. No.

Q. It was never prepared by you?

A. Never.

Q. Not even under your control as far as the clauses in that contract?

A. I can recommend to a certain extent.

Q. Well isn't that, Mr. Lieutenant Apperson, isn't that a contract that is used all over the United States? A. I presume so, yes.

Q. And it is probably prepared by—well, perhaps in Washington—I don't know.

(Testimony of Lt. Harvey B. Apperson.)

A. I presume so, I don't know.

Q. So in any event we are agreed that so far as the provisions in the contract you have absolutely nothing to do [109] with it?

A. That is correct.

Q. And you can't even vary the terms of the contract, can you, with exception?

A. With exception of fair return to the Government, and in some cases where it would be more convenient and more easy and more revenue for the Government as to when the material is to be moved and so forth I can.

Q. The contract itself provides for your line of exceptions, doesn't it?

A. I presume so. I am not too familiar with the contract.

Q. You say you are not familiar with the terms of the contract?

Mr. Lamb: That isn't what he said. He said he was not too familiar with the terms.

Q. I don't know what you mean by not too familiar. At least you are not familiar with every provision in there? I am not trying to embarrass you.

A. I don't have the contract right here in front of me. I doubt if anybody in the service can quote it word for word without it in front of him.

Q. Well in any event then we agree on this, that if there are any exceptions, these exceptions are incorporated in that contract?

(Testimony of Lt. Harvey B. Apperson.)

A. Specifically what? [110]

Q. Well as to, for example, supposing delivery cannot be effected at a certain time, you can get a waiver from the area control office or something like that?

A. I don't think a waiver would be necessary.

Q. You would have control over that yourself?

A. Yes.

Q. In other words, if a man doesn't obtain delivery or refuses to obtain delivery for reasons inconvenient to him to get delivery in ten days in the terms of the contract you could make an exception in his case?

A. Yes, I think I could.

Q. You don't have to pounce upon him and you could if you wanted to?

Mr. Lamb: Your Honor, I am going to object to the form of that question. There is no inference Lieutenant Apperson is going to pounce on anyone.

Q. I used the word pounce not in the sense of physical pouncing. I mean you are not going to enforce the rigid terms of the contract and declare a forfeiture, that is what I mean?

A. After ten days?

Q. Yes. A. I can declare him forfeited.

Q. You can? A. Yes.

Q. But you don't have to do it if you don't want to do it? A. It depends on how——

Q. It wasn't done in the Schneider case, in this case? [111] A. No.

(Testimony of Lt. Harvey B. Apperson.)

Q. You threatened, however, to do it?

A. Yes.

Q. Did you do it because it was Mr. Schneider?

A. No.

Q. You did it because—for what reason—too far away; he was far away from here?

Mr. Lamb: Let him answer the question, if you will please, Mr. Leibowitz.

A. I didn't do it—it was because he was far away was the reason I didn't, and also his bid represented a good price to the Government and good return to the Government.

Q. Now from your experience and of course you have the experience of having other people bid on the merchandise would you say that his price, that his bid was a foolish price?

Mr. Lamb: We object to that as calling for a conclusion.

Q. I am asking him if he knows from his experience?

The Court: I will sustain the objection; that is not a proper question.

Q. Well you have stated on direct, Lieutenant Apperson, that his price was too high?

A. I didn't say too high.

Q. What did you say in reference to it?

A. I said it was high. It was high enough to make it a very good return to the Government.

Q. Did you know whether Mr. Schneider could make a profit on that? A. I did not.

(Testimony of Lt. Harvey B. Apperson.)

Q. You did not? Did he tell you that he could make a profit?

A. In the course of the conversation he said that was a pretty good business; that he did make profits.

Q. So as far as he was concerned it was a correct price and as far as the Government was concerned it was a high price?

The Court: Treat the witness fairly. You have piled up two or three questions there all at once.

Mr. Leibowitz: I withdraw that.

Q. As far as Mr. Schneider is concerned it was a fair price to pay for the merchandise?

Mr. Lamb: To which we object as being a conclusion, the evidence now showing that the defendant, Schneider, put in the bid himself; he selected the price, and it is calling for a conclusion of the Lieutenant anything as far as the defendant is concerned.

Mr. Leibowitz: The Lieutenant testified, he said the price of Mr. Schneider was high. And I don't want the jury to get the impression that the price was so high he was trying to get something to take him out of the loss.

Mr. Lamb: I will withdraw my objection.

Q. As far as the Government is concerned that price was a good return? A. It was. [113]

Q. And as far as Mr. Schneider was concerned

(Testimony of Lt. Harvey B. Apperson.)

he thought he could make a profit on it notwithstanding the price he paid?

A. He said he could make a profit on all that sort of that stuff, whether he was talking about this particular stuff or not—Your Honor, I don't see how it is too relevant.

Q. Now, Lieutenant Apperson, did you and Lieutenant Greene ever discuss the sale to Mr. Schneider before he came to Great Falls and before he took delivery of the merchandise at Great Falls?

A. Yes, we did.

Q. Did Lieutenant Greene ever tell you that Mr. Schneider had written a letter to him in which he asked him to ship the merchandise to New York, did he tell you that or something like it?

A. There was some question whether we could ship it. I explained to Lieutenant Greene it was impossible.

Q. In other words, Lieutenant Greene did tell you Mr. Schneider had written one letter or several letters?

A. I don't remember whether he said he had written any letters or not. I think he asked me whether he could ship. That comes up with every contract we have.

Q. And did Lieutenant Greene ever tell you that Mr. Schneider had asked him to furnish labor here at his expense, at Mr. Schneider's expense, so that he would not have to come to Great Falls to pick up the merchandise? A. I don't remember.

(Testimony of Lt. Harvey B. Apperson.)

Mr. Lamb: Would you like to have the letter?
The original letter?

Mr. Leibowitz: Yes.

Q. Well I will show you the letter and ask Lieutenant Apperson first if Lieutenant Greene had ever showed you this letter, shown you this letter and ever discussed the contents of this letter?

A. I will say again that I remember that Lieutenant Greene said something about shipping the stuff to him, and I will say again that I told him it was impossible, and that we couldn't load it and we wouldn't load it.

Mr. Lamb: Mr. Leibowitz, would you like to have that letter submitted in the record?

Mr. Leibowitz: That is what I will do.

The Court: It is offered in evidence?

Mr. Leibowitz: Yes.

Mr. Lamb: I have no objection, your Honor.

The Court: It may be received in evidence.

(Whereupon said Defendant's Exhibit No. 5, being a letter from Mr. Schneider to Lieutenant Greene, offered and received in evidence, is a part of this record.)

Mr. Leibowitz: May I be permitted to read that, please?

The Court: Yes.

Mr. Leibowitz read Defendant's Exhibit No. 5 to the court and jury. [115]

Mr. Lamb: Would you like to have the answer to that letter?

(Testimony of Lt. Harvey B. Apperson.)

Mr. Leibowitz: Yes.

Mr. Lamb: That was dated October 18th—unless you have the original.

Mr. Leibowitz: I have the original. We wired for it and it will come in tomorrow.

Mr. Lamb: I will give you a copy.

Mr. Leibowitz: Now that is an answer to that letter?

Mr. Lamb: I assume it is.

Mr. Leibowitz: This letter is an answer.

Mr. Angland: Just a minute, Mr. Leibowitz, don't you think it better be marked and offered in evidence before it is read into, to the jury?

Mr. Leibowitz: Defendant's Exhibit No. 6.

The Court: Is it offered in evidence?

Mr. Leibowitz: Offered in evidence.

Mr. Lamb: No objection.

The Court: It may be received in evidence; both of them?

Mr. Leibowitz: Yes.

(Mr. Leibowitz read Defendant's Exhibit No. 6 to the court and jury.)

(Whereupon said Defendant's Exhibit No. 6, being a [116] letter from Lieutenant Greene to Mr. Schneider, offered and received in evidence, is a part of this record.)

Q. Now, Lieutenant Apperson, reference is made to these letters to a word "overage." Now will you please be good enough to explain what this overage is?

(Testimony of Lt. Harvey B. Apperson.)

A. The reason that clause is put into the contract is that all these weights are estimated. I say that is the reason that is put in the contract is these weights are estimated. Now we varied. We may over estimate and we may estimate a smaller amount. When you pack it up you can't guess the pounds so that 25% overage is put in there so that in case there is 1,000 pounds and there may be 1,100 pounds. The reason that is put in there is so that you can have the benefit of buying at the unit cost that other 100 pounds, or in the event we have estimated short on these weights he only buys 900 but he would pay less, of course.

Q. Now is it correct to say that in this particular instance Mr. Schneider purchased approximately sixteen or seventeen thousand pounds of rags and requested an additional 25% pursuant to the contract?

A. If available.

Q. If available. And do you know whether it was available or not at that time?

A. Those rags were being generated all the time they were coming and we couldn't tell.

Q. Did you know whether 25% was there to give him? [117]

A. I wouldn't have known at the time whether there was shortage or over.

Q. Would you say on October 26th, 1948, when Lieutenant Greene had written a letter in which he stated that there will be an overage of 25% "and we allow 25%"?

Mr. Lamb: He didn't say there would be. He

(Testimony of Lt. Harvey B. Apperson.)

said they would allow 25%. I will have to ask you not to misquote the letter.

Q. Would you say, Lieutenant Apperson, in any event having the benefit of time—whether at that time on October 26, 1948, there was an overage of 25% available?

A. I would say I wouldn't know.

Q. You say that you don't know because you don't recollect, are you saying that, or is it you definitely don't know?

A. I do not know. However, I know that there was within 25% of the amount stated on the contract either way, and you know that.

Q. There was a possibility of 25% at any rate from the inventory book you kept at the Air base sales office? A. Yes, estimated weight.

Q. And, of course, when Mr. Lieutenant Greene had written a letter discussing the percentage and overage, Lieutenant Greene has an inventory book available to him at his office?

A. No, not at his office. [118]

Q. Let's assume Lieutenant Greene wanted to know how much stuff you had, would he have to come to you in order to find out or could he obtain it elsewhere?

A. He would have to come to me.

Q. As his only source?

A. That is right, unless he wanted to refer back to a past report we submitted, however, that might be more or less, or how much stuff we picked up in the meantime.

(Testimony of Lt. Harvey B. Apperson.)

Q. But let us assume you were not available for some reason; can he obtain that information from that area commander somewheres in Utah?

A. He can obtain the weight correctly between the 25th and the end of the month; however, that is something that is a running figure that weight, it varies.

Q. You get more stuff?

A. We get more stuff in and utilize quite a few rags in everyday operations in the shops.

Q. But in any event if you weren't around, he could get the information from Utah? Wire Utah?

A. He could get it from the Sergeant. I doubt if he would wire Utah.

Q. But if he wanted to wire Utah, it would be made available?

A. And could get the figure how much we had on hand a certain date. [119]

Q. A certain date?

A. However, that is a one day a month report. However, he could find out from Utah between the 10th and 20th.

Q. That is at a certain time he could get that information? A. That is right.

Mr. Lamb: I have the Major from the Air base to show the records of appointment of Lieutenant Apperson.

The Court: Those were the books?

Mr. Lamb: The order appointing Lieutenant Apperson as Base Salvage Officer, which the defendant requested, and I have those records.

(Testimony of Lt. Harvey B. Apperson.)

The Court: Is there an officer here from the Base in charge of them?

Mr. Lamb: Yes, sir.

The Court: Very well, that is what they called for. We will have to put it in. We will suspend this cross-examination until that is put in. Bring him in.

The Court: We will take a recess.

(4:35 p.m.)

(Court resumed, pursuant to recess, at 4:45 o'clock p.m. at which time the jury, defendant, and all counsel were present.)

Mr. Lamb: Major Redding may be sworn, please. [120]

MAJOR C. E. REDDING

was called as a witness, and having been first duly sworn, testified as follows:

Direct Examination

By Mr. Lamb:

Q. Your name is C. E. Redding?

A. That is correct.

Q. And you are a Major in the United States Air Force? A. Right.

Q. And what position do you occupy in the Air Force Base adjacent to the city of Great Falls, Montana?

A. I am Adjutant General of the 1701st Air Transport Wing.

(Testimony of Major C. E. Redding.)

Q. And as such you have in your possession a duplicate original of the Special Order pertaining to Lieutenant Harvey B. Apperson?

A. That is correct.

Q. I will show you an instrument marked Plaintiff's Exhibit 7, being Consolidated Special Order No. 48, and ask you if this is a duplicate original of the order pertaining to Lieutenant Harvey B. Apperson? A. It is.

Mr. Leibowitz: May I interpose an objection at this time? We have no record here or statement just where it came from and what happened to the original. I think we ought to get some information along that line.

Q. In the furnishing of a special order in the Army or [121] the Air Force how does the order come into existence?

A. The various paragraphs are all originated by the office concerned and sent to a special order clerk who cuts a stencil and the prescribed number of copies are run off from the stencil. The originating officer who is as known in our headquarters as the Adjutant General signs it to make it a special order.

Q. Then in other words if a special order was cut out at the Air base today, you as Adjutant General would sign the stencil? A. That is correct.

Q. And that all of the copies then which were run off from the stencil would have the character of being originals, is that correct? A. Exactly.

Q. And is the Special Order No. 48, dated Au-

(Testimony of Major C. E. Redding.)

gust 4, 1948, marked Plaintiff's Exhibit 7, of that character? A. It is.

Q. And is the exhibit which you have brought here and which has been identified as Plaintiff's Exhibit 7 part of the official records of the Air Base adjacent to the city of Great Falls, Montana?

A. It is.

Q. And what paragraph is it that pertains to Lieutenant Apperson? A. Paragraph 12.

Q. And the other paragraphs contained therein pertain to other members of the Armed Forces?

A. That is right. [122]

Mr. Lamb: At this time we will offer in evidence Plaintiff's Exhibit 7, and the particular paragraph 12 thereof pertaining to Lieutenant Apperson?

Mr. Leibowitz: You are not just offering the back side of it, are you?

Mr. Lamb: I am offering the whole exhibit.

Mr. Leibowitz: I object to it for this reason, your Honor. Counts 1 and 2 of the indictment set forth that Lieutenant Apperson is the Base Salvage Officer. The description here certainly is not a Base Salvage Officer and for that reason I think that it is objectionable.

The Court: The question in regard—

Mr. Lamb: Paragraph 12, your Honor.

The Court: I don't see that your objection can be any good under that paragraph. Question him about that and see what his duties are as salvage officer, whether it said so in No. 12, using a whole lot of abbreviations and letters. I suppose the Army officer would know.

(Testimony of Major C. E. Redding.)

Q. (By Mr. Lamb): The paragraph in particular reads, "with primary duty as salvage and property disposal officer." In the fall of 1948 were you out at the Air base?

Mr. Leibowitz: Your Honor, I just want to object to this line of testimony with reference to the explanation what that document is. [123]

The Court: Oh, no, I will let him explain it.

Mr. Leibowitz: I just want to object to it.

The Court: The objection is overruled.

Mr. Leibowitz: And get my exception.

The Court: Go ahead.

A. I was at the Base from the 15th of October, 1948.

Q. From October 15th, 1948, and particularly in November, 1948, was there any other salvage officer at the East Base?

Mr. Emigh: To which we object as incompetent, irrelevant and immaterial and not explaining the document in his hand, and not being in accordance with the charge of the indictment.

The Court: Oh, well, I think your objection is altogether too broad and I will overrule the objection. Go ahead, let's find out about this salvage officer.

A. To my knowledge there was not any other salvage officer.

Mr. Leibowitz: I move the answer be stricken.

The Court: Than Lieutenant Apperson?

A. Than Lieutenant Apperson.

(Testimony of Major C. E. Redding.)

The Court: And this shows his appointment as salvage officer, does it, this No. 12, paragraph No. 12?

A. That is correct. The only difference in the order is it also mentions property disposal. [124]

The Court: That is all right.

Q. (By Mr. Lamb): This particular order does make him Base Salvage Officer, is that correct?

A. Yes.

Mr. Leibowitz: Of course, we have our objection?

The Court: Yes, you have your objection. It is submitted in evidence. Your objection is overruled.

Cross-Examination

By Mr. Leibowitz:

Q. Major Redding, of course, you didn't have anything to do with the appointment of Lieutenant Apperson, did you? A. I did not.

Q. And what you brought here is something you found in the files at the Air base?

A. That is correct.

Q. An original was prepared; was it prepared pursuant to this order, is that true?

A. It was not.

Q. It was prepared apparently by order of Colonel Chennault? A. Right.

Q. Is there anything on this exhibit which would indicate that it is a duplicate original of the one that was actually, contained the signature of Colonel Chennault? [125]

(Testimony of Major C. E. Redding.)

Mr. Angland: Just a minute. Your Honor, to which we object. I think the question is wholly irrelevant and immaterial. The witness has testified to an official record of the Government and as such would be admissible.

The Court: Yes, it is an official record and it is kept there at the headquarters, isn't it?

A. Yes, sir.

The Court: Colonel Chennault was the Commanding Officer at the time?

A. Colonel Chennault did not sign orders himself. It was by order of Colonel Chennault. It is signed by members of his staff.

Q. (By Mr. Leibowitz): Is there anything on that paper or document which contains the signature of a member of his staff?

Mr. Angland: To which we object, your Honor. It is irrelevant and immaterial. It is unnecessary. It is an official record.

Mr. Leibowitz: It what?

Mr. Angland: It is an official record.

Mr. Leibowitz: It isn't official because it is brought out of the file. It is official by virtue of some signature, otherwise it is a scrap of paper.

Q. How do you explain that, Major Redding?

A. I believe there is evidence of a signature; it isn't [126] clear on all pages.

Q. (By Mr. Leibowitz): Will you point here what you call a signature?

(Testimony of Major C. E. Redding.)

A. Well this is on the cover sheet and let's get the one that has paragraph 12 on it.

Q. Well I want the record to show that Major Redding has pointed to the two names, one name which appears on the first page of the exhibit, Plaintiff's Exhibit 7, and the other one on page 5, the last page. Am I correct? A. That is right.

Q. I want the record to show—of course, you don't know, Major Redding, if that is the signature of the man whose name appears on the front and last sheet, of the men whose names appear on the front and last sheet?

A. All I can say is it resembles them.

Q. Are they still at the Air base?

A. That was Caples—no, he is not there any more. He has been reassigned.

Mr. Leibowitz: Well we object to the admission of it.

Q. (By The Court): Well, Major Redding, this is an official document that you keep in your office? Are you Adjutant General? A. I am.

Q. That is your title? A. Yes. [127]

Q. And you have charge and custody of these official documents and are orders directing this officer or that officer to serve here or there in some certain capacity? A. That is correct.

Q. And that entire document there that is offered contains official orders? A. Yes.

Q. And it is signed by some member of the staff of the commanding officer of the Base, is that it?

(Testimony of Major C. E. Redding.)

A. That is correct.

Q. And you sign some segments of this official document, don't you? A. Yes.

The Court: Well that is sufficient. I will overrule the objection. It may be admitted in evidence.

Mr. Leibowitz: I will take the exception from it.

(Whereupon said Plaintiff's Exhibit No. 7, Special Order No. 48, offered and received in evidence, is a part of this record.)

The Court: Any further cross-examination?

Q. (By Mr. Leibowitz): Major Redding, do you know anything about this case?

A. I know nothing about the case.

Q. Have you heard of it at the time when you came there on October 15th—have you heard anything around referring about this thing?

A. I might have heard it mentioned. I believe I did. [128]

Q. But in any event you had nothing to do with any of the pre-arrangements?

Mr. Lamb: To which we object as not being proper cross-examination. It was not gone into on cross-examination.

The Court: Not proper cross-examination; objection is sustained.

Q. Did Lieutenant Apperson call upon you for and ask permission to do certain acts with reference to obtaining of salvage materials for Mr. Schneider?

A. No.

Q. He didn't—all right, that is all right.

(Testimony of Major C. E. Redding.)

Mr. Lamb: Your Honor, I have one more question on direct examination if I may have permission to reopen.

The Court: Yes.

Q. (By Mr. Lamb): Lieutenant Redding, was the order which has now been admitted in evidence as Plaintiff's Exhibit 7 in full force and effect on November 22nd and November 23rd, 1948?

Mr. Leibowitz: I object to it. The exhibit is in evidence and speaks for itself.

The Court: What are the dates on there?

Mr. Angland: It was issued in August, your Honor.

The Court: I will permit him to answer the question. Did the order continue on? Was he actively engaged, do you know?

A. The order continues until it is superseded by another [129] order.

The Court: When was it superseded, do you know?

A. All I can say is that to my knowledge Lieutenant Apperson was Base Accountable Officer until he was transferred February 12th, 1949.

Q. (By Mr. Lamb): What do you mean by Base Accountable Officer?

A. I mean Base Salvage Officer.

Q. Until he was transferred in February, 1949?

A. Yes.

Q. To your knowledge?

A. That is to my knowledge.

Q. Major, do you personally know whether or

(Testimony of Major C. E. Redding.)

not on November 22 and November 23, 1948, whether Lieutenant Harvey B. Apperson was the Base Salvage Officer at the Airbase on that particular date?

Mr. Leibowitz: I object to it. I think the witness——

Q. He was the Salvage Officer from the time he was appointed and designated as such in August until February, 1949, when he was transferred?

A. Yes.

Q. And that was of your own personal knowledge? A. Yes.

The Court: Yes, that is the way he testified.

Mr. Leibowitz: Of course, I have my exception to it. [130]

The Court: Oh, yes, certainly you have your exception.

The Court: I think we will suspend here and continue the cross-examination until tomorrow morning.

(Whereupon the court admonished the jury.)

The Court: Court is adjourned until tomorrow morning at 10:00 o'clock. (5:10 p.m.) December 13, 1949.

(Court resumed, pursuant to adjournment, at 10:00 o'clock a.m. on December 14, 1949, at which time the jury, defendant, and all counsel were present.)

The Court: Mr. Leibowitz, I believe we interrupted your cross-examination yesterday.

Mr. Lamb: Will you take the stand, please?

LT. HARVEY B. APPERSON

resumed the stand and testified as follows:

Cross-Examination

(Continued)

By Mr. Leibowitz:

Q. Lieutenant Apperson, you stated that the merchandise that came out of warehouse 1045 and loaded on the truck and into the railroad car was valued to the Government at a cost price of approximately \$36,000?

A. That is correct, original purchase price.

Q. Original purchase price. Can you tell us what the original purchase price to the Government was on the scrap materials that was sold legitimately to Mr. Schneider?

A. I could with some research.

Q. Well can you give us an estimate of how much it cost to the Government?

A. Not offhand, no.

Q. Would it be an exaggeration to say that it might be worth, cost to the Government one hundred fifty, two hundred thousand dollars? [132]

A. I couldn't give an estimate at all.

Q. Well, let's take it this way. Well, can you tell us how much was the value of the merchandise that was loaded on the car and came out of 1045, what value was there as a salvage price?

A. That would be very hard to get at. It depends on what is bid. I understand that since that time it has been sold and it amounts to approximately \$8,000.

(Testimony of Lt. Harvey B. Apperson.)

Q. \$8,000?

A. Or the bid amounted to \$8,000, and that is what the Government received.

Q. That is what the Government received?

A. That is correct.

Q. Now, Mr. Lieutenant Apperson, before you loaded these cars and you had to get the permission of the Colonel, did you? A. No.

Q. Well at that time you had secured permission from the Colonel to go along with the F.B.I.?

A. Yes.

Q. In other words, at your own initiative with the consent of the Colonel superintended this merchandise taken from the warehouse and loaded on the trucks?

A. Yes, I presume so. I mean, it is hard to, the circumstances that——

Q. Well, still let's assume Mr. Schneider came to you and said: "Now, here, let me have this merchandise." And you [133] said: "All right, I am going along with you and let's take the merchandise out at six o'clock in the evening." And which was done in this very case. Could you have accommodated him in that way? Could you have done that?

A. I couldn't have done it legally. I mean, I couldn't have.

Q. Well, by legally you mean you would have violated rules and regulations?

(Testimony of Lt. Harvey B. Apperson.)

A. It is exactly the same as taking anything that doesn't belong to me.

Q. Is that the only way you could have done that is by stealing the merchandise?

A. However, if he had legitimately bought——

Q. I haven't asked you that question, if he legitimately bought.

A. I could answer the question I could have moved it to another warehouse.

Q. I asked you—moved it to a warehouse and had it loaded in Government trucks and taken to the depot and put in the railroad car and off it went?

A. I couldn't have done it legally.

Q. You couldn't have done it? A. No.

Q. And the only time you could have done it would have been if you stole it and no one was around to see you do it? A. That is correct.

Q. Now, Lieutenant Apperson, this stuff was loaded after six o'clock, is that so? A. Which?

Q. Just about? A. Which.

Q. The stuff that came out of 1045; all the stuff as a matter of fact?

A. No, that was finished about six o'clock.

Q. Well, when did you start?

A. Three thirty, four o'clock, somewheres in there.

Q. And that was after the servicemen had been through with their day's work?

A. Yes, as far as their regular routine duties.

Q. Was the car already on the railroad track?

(Testimony of Lt. Harvey B. Apperson.)

A. Yes.

Q. Now I understand that Government trucks or truck was used in carting of the merchandise from the warehouse to the loading depot?

A. That is right.

Q. Do you have a right ordinarily as part of your duties in shipping this merchandise, the right to use Government trucks to do so?

A. Within reason, of course.

Q. I beg your pardon.

A. On Government property, yes.

Q. Well for shipment to a purchaser, a man who purchases merchandise?

A. Well, under the terms of the contract I wouldn't have hauled it into Great Falls.

Q. You couldn't do it under the terms of the contract, is that so?

A. It was more or less an accommodation. [135]

Q. But if you accommodated, it would be a violation of rules and regulations and so forth?

A. Not entirely, no.

Q. Well, certainly it isn't part of the contract?

A. It isn't part of the contract; however, there is no regulation saying I can't use Government transportation.

Q. Well, if you chose to do it on behalf of one, it would be rather unfair not to do it on behalf of another?

The Court: Well, that is rather argumentative.

Mr. Leibowitz: I will withdraw that question.

(Testimony of Lt. Harvey B. Apperson.)

Q. Now in order to obtain the right to a truck you would have to receive permission from some individual or personnel or person at the Airbase?

A. Not particularly, no.

Q. In other words, you would just go up to the place where a truck is and say: "Now, here, I want you to come down and take stuff out of this warehouse and bring it right to the depot."

A. It wasn't down at the depot.

Q. Or wherever the loading base was?

A. Yes, all I would have to do is pick up the telephone.

Q. And you wouldn't be questioned?

A. No.

Q. Nobody would reproach you for doing that?

A. No.

Q. Have you ever done that before?

A. Yes, every day I call a truck, if that is what you mean. [136]

Q. What is that?

A. Every day I obtain trucks on the base.

Q. I don't mean every day. Every day you didn't have merchandise?

A. Is your question whether I moved material with a truck before?

Q. Use a truck for civilian, for people who had purchased?

A. This was the first time while I was salvage officer that I ever moved things with a Government truck.

(Testimony of Lt. Harvey B. Apperson.)

Q. In other words, Mr. Lieutenant Apperson, you wouldn't have the authority to command here a truck and have it used for the purpose of complying with a contract that you entered into with a civilian, would you?

A. It all depends. It depends on the circumstances.

Q. Well, you haven't done it as long as you have been there at the base, you so testified?

A. Would you ask the question again, please?

Q. Mr. Schneider—put it in this form. Mr. Schneider purchased the material. He wants to have a delivery made of that material. He says: "I can't get a truck, or I don't want to get a truck, or I can't get a truck from Great Falls; will you get a truck for me, a Government truck, and cart this material right to the loading base." And would you do it? A. Under the circumstances, yes.

Q. Well, isn't it a fact, Mr. Lieutenant Apperson, that is exactly what Mr. Schneider had requested in one letter after another and one telephone call after another?

A. He requested we load and ship this material to him.

Q. Yes.

A. It involves quite a bit of time and labor. Things don't fly from the truck into the freight car.

Q. Yes, but in this case the loading was done by G.I. labor?

(Testimony of Lt. Harvey B. Apperson.)

A. That is right, and Mr. Schneider reimbursed them for that labor.

Q. And that is exactly what Mr. Schneider requested in telephone conversations with you?

A. He had never made an agreement with me.

Q. I didn't ask you whether he made an agreement.

A. He had never indicated before paying for the labor.

Q. He kept on seeking this and you wrote back, didn't you? A. I didn't write him at all.

Q. Lieutenant Greene said that no Government handling will be furnished? A. That is right.

Q. Would you say that Mr. Schneider never requested, never wanted to pay or never requested that labor be furnished and he pay for it?

A. He didn't say one way or another.

Q. Well, did you say it could be done if he paid for [138] the labor?

A. That was in the contract.

Q. In other words, it couldn't have been done?

A. He would have had to hire his own labor. That takes time, too. I am not working for Mr. Schneider.

Q. Did Mr. Schneider have a hard job in getting the half a dozen boys at the Airbase to load this car?

A. Not particularly.

Q. On the 23rd? A. Not particularly.

Q. No trouble at all; as a matter of fact you accommodated him and furnished the labor?

A. That is right.

(Testimony of Lt. Harvey B. Apperson.)

Q. You went out of your way in order to secure that labor? A. Not particularly, no.

Q. You just asked the half a dozen individuals if they wanted to make some money?

A. I couldn't have spent a day to obtain labor for him.

Q. But you didn't spend a day obtaining this labor, did you? A. No.

Q. How long did it take you?

A. Twenty minutes, half an hour.

Q. Well, would it take any more if you desired to accommodate him? A. Beg your pardon?

Q. Would it have taken any more if you desired to accommodate him if he were in New York City and made that request?

A. I couldn't very well go on nothing. I couldn't get [139] him the labor and I couldn't order my people to do it on Government time or their own time without any knowledge of their being paid for it.

Q. In other words, you were perfectly willing to depart from the terms of the contract?

A. It wasn't departing from the terms of the contract.

Q. You furnished Government labor, which you didn't——

The Court: That is argumentative. Suppose you drop this part of it. It is getting repetitious possibly.

Mr. Leibowitz: All right.

(Testimony of Lt. Harvey B. Apperson.)

Q. Now, Lieutenant Apperson, base No. 1045 is located where as with reference to your office; with reference to your own office how far is it away from your place?

A. Building No. 1045 is approximately three blocks.

Q. Three blocks. And how far is it from the railroad track or from the loading depot?

A. Approximately five.

Q. Five blocks. How many trips were made from the loading depot, from the warehouse 1045 to the loading depot?

A. Approximately five, four or five.

Q. Five trips?

A. Four or five. I am not sure.

Q. And how long did it take?

A. Oh, about four thirty to about six o'clock, five thirty or six.

Q. Did you operate with a small or large truck?

A. Small. [140]

Q. Small truck. By small can you give us an idea of the size, half ton? A. Ton and a half.

Q. Now this stuff was loose or tightly packed?

A. It was packed in cartons.

Q. At that time, Mr. Lieutenant Apperson, while this process of loading the car took place, Mr. Schneider had not yet paid for any of the merchandise?

A. No. However, I presume they continued loading while they were loading the scrap.

(Testimony of Lt. Harvey B. Apperson.)

Q. You were with him all the time?

A. With the exception of the few minutes I left.

Q. Do you know whether he paid for that scrap during that one half hour period?

A. He did pay for the scrap. He didn't have that until later.

Q. In other words, he didn't pay until an hour or hour and a half later?

A. He paid for the scrap.

Q. Before the loading took place?

A. I presume it went on while he was paying for it.

Q. Before he paid for it?

A. We loaded the stuff from 1045.

Q. Is it customary and usual and part of the contract for any merchandise to be loaded on a truck and into a car without having the stuff paid for?

Mr. Angland: To which we object, your Honor. The contract speaks for itself.

The Court: I will sustain the objection.

Q. Well, you are familiar with the terms of the contract, aren't you? A. Yes.

Q. And isn't it the fact that a contract says that you are supposed to pay for merchandise before you are entitled to have it loaded?

Mr. Angland: Just a minute. Same objection. The contract speaks for itself.

The Court: Sustain the objection.

Mr. Leibowitz: I think I have a right, your Honor, to show there was violation of the rules and

(Testimony of Lt. Harvey B. Apperson.)

regulations and a departure from the contract in order to show——

The Court: All right, get the contract and see what the rule is and call it to his attention.

Mr. Leibowitz: Well, he did say—all right.

Witness: Your Honor, I might be able to clear this point in spite of the fact——

Mr. Leibowitz: Wait a minute; don't volunteer.

Q. I call your attention to paragraph 7 of the contract and ask you what it says with reference to the payment of the merchandise?

A. I am quite familiar with this paragraph.

Q. All right, now isn't it true that before any loading can be taking place the merchandise must be paid for? [142]

A. I will clear this point this way. The track-age that this railroad car is sent on is on Government property and the whole railroad car would have to be removed before you would consider your property being removed.

Q. I don't understand that answer. I just want to know if you, as a man can come along and take the merchandise away and not pay for it yet?

A. No, he can't.

Q. But they permitted him to remove the merchandise from the warehouse and place it on his truck without first going into the office and paying for it? A. No.

Q. They would have to first see his money to find out if he used money to pay for it, isn't that true? A. Correct.

(Testimony of Lt. Harvey B. Apperson.)

Q. But that wasn't done in this case, was it?

A. He paid for it before he removed the scrap.

Q. I didn't ask you that question. I am only talking about the stuff that come out of 1045?

A. No, he didn't pay for it.

Q. But notwithstanding the fact that he didn't pay for it you removed it from the warehouse, loaded the truck and put it right on the car, didn't you? That is a fact?

A. I removed it from the warehouse and put it on the railroad car?

Q. Without having Mr. Schneider pay for it?

A. That is right. [143]

Q. And there was no request on your part to go to the office and pay for this particular merchandise, was there? A. No.

Q. Now during this entire period while these things were being done the F.B.I. were right in around there?

A. I presume they had me under surveillance.

Q. Were there any officers there in that point at that time? A. None other than myself.

Q. No one but yourself? A. That is right.

Q. Now, Lieutenant Apperson, after you reported to I think it was Captain—do you recall the man's name? Lextern or something like that? He was the man who was in charge of—how do you pronounce the name, Brynildson?

A. Brynildson.

Q. He was the first man you reported the con-

(Testimony of Lt. Harvey B. Apperson.)

versation to that you had with Mr. Schneider?

A. That is right.

Q. And immediately following that conversation he called in the F.B.I., is that true?

A. That is correct.

Q. And after the F.B.I. had come on to the Airbase and discussed the matter with you and the Captain, did you then get in touch with Mr. Lamb, or was Mr. Lamb called in?

A. I don't know. We contacted and had a conversation with the F.B.I. here, not on the Base, and, of course, what he did I couldn't say.

Q. What Mr. Matthews did, you don't know?

A. I presume he contacted Mr. Lamb.

Q. You had nothing to do with the contacting of Mr. Lamb? A. No.

Q. At that time your Commanding Officer knew nothing about it, did he?

A. Well, he knew we were selling the scrap.

Q. I didn't ask you that. He knew nothing about this business? A. Not right that minute, no.

Q. Not at the time the F.B.I. was called in, is that so? A. No, he didn't know.

Q. Well, did you report this thing to the Commanding Officer, Mr. Lieutenant Apperson?

A. With Mr. Matthews, Captain Brynildson and the Staff Judge Advocate; all three of us reported it.

Q. That is after the F.B.I. came in?

A. That is right.

Q. You had your discussion and you decided to

(Testimony of Lt. Harvey B. Apperson.)

go and report the facts to the Commanding Officer?

A. That is correct.

Q. And that was General Chennault?

A. Colonel Chennault.

Q. Before you procured or before you reported the facts to the Colonel did any of the F.B.I. or Mr. Matthews suggest to you that the plan should be laid to catch or entrap Mr. Schneider?

A. No, they indicated to me just to go along and keep my mouth shut. [145]

Q. Yes.

A. And see what he would do; let him make all the ovations.

Q. But you didn't keep your mouth shut, did you? A. Well, you have to answer yes or no.

Q. Then you went further than that, you went to see your Colonel, didn't you? A. Of course.

Q. Well, were you afraid that you couldn't do those things unless you had permission of the Colonel to do it?

A. No, I wasn't afraid. I felt I went to the Colonel as a courtesy.

Q. Well, did you feel you might violate some rule or regulation if you didn't take the Colonel into your confidence?

A. I am not in the habit of taking bribes.

Q. I haven't asked you that.

A. And I wanted to explain to the Colonel. You asked me why I went to see the Colonel.

Q. Yes, I want to know if there is a specific rule

(Testimony of Lt. Harvey B. Apperson.)

or regulation that prohibits you from going along on a scheme of this sort unless you reported the thing to the Colonel to perform something illegal?

A. Theoretically the Colonel is supposed to know everything I do.

Q. I haven't asked you whether theoretically he is supposed to know. I asked you if there was any rule or regulation you felt you might violate if you went along with Mr. Matthews [146] unless you reported that fact to the Colonel?

A. No, I can't think of anything I would have. I didn't feel that way at the time I was violating any.

Q. In other words, it would have been a common thing if he had put the merchandise into the trucks and didn't pay for it, have Mr. Schneider pay for the merchandise? A. No.

Q. On your own? A. Of course not.

Q. In other words, you would have to obtain some sort of consent?

A. I wanted them to know exactly what I was doing.

Q. The Colonel?

A. The Colonel and the F.B.I.

Q. The F.B.I. knew. I am referring to the Colonel.

A. I will explain another reason why it was necessary they knew.

Q. Go ahead and explain.

A. That area is guarded and those guards are armed. I have to explain why and the reason I am down there after dark.

(Testimony of Lt. Harvey B. Apperson.)

Q. Then there was a restriction against the use of a certain area? A. Not a restriction.

Q. After certain hours?

A. Not a restriction if you have a legitimate reason.

Q. Legitimate purpose—but you had no legitimate purpose?

A. I had a legitimate purpose in that I was loading the scrap he purchased. [147]

Q. That wasn't the only reason that you have. Well, the scrap would not have taken that much longer? I will withdraw that question. You wouldn't have permitted Mr. Schneider to take the scrap away unless he had brought a truck from Great Falls and hire his men and had that stuff removed, isn't that so?

A. It depends on circumstances. I hadn't planned to.

The Court: You have gone all over that.

Mr. Leibowitz: I just want to show this.

Q. And that was only because you wanted to catch Mr. Schneider? A. No.

Q. And taken——

A. Wait until I get through.

Q. ——the merchandise out of 1045 that you were willing to have the regulations violated?

A. No. Mr. Schneider's bid had been high enough that a little use of a Government truck wouldn't have cost the Government too much. I used that because labor was difficult at that time to

(Testimony of Lt. Harvey B. Apperson.)

obtain in Great Falls, and a truck would have been difficult. Mr. Schneider would have had to pay the truck to come to the base and all and go back to the base.

Q. You would have furnished a Government truck for that purpose? A. In this case, yes.

Q. But you wouldn't have furnished any Government labor?

A. I couldn't furnish Government labor. [148]

Q. But he would still have to go to Great Falls and pick up the labor?

A. I couldn't have obtained it there.

Q. Then he would have to go to Great Falls and pick it up? A. That is right.

Q. Now, after you reported to Colonel Chennault, he issued an order, didn't he, permitting you to go ahead and co-operate?

A. He gave me a letter.

Q. Have you the letter here?

A. No, I do not have it right here, no.

Q. Did you turn in that letter to Mr. Matthews?

A. I presume Mr. Matthews has a copy of it.

Q. May I have the letter, please?

A. I can get the letter in twenty minutes if necessary.

Mr. Leibowitz: They say they haven't got it. You say they have a copy of it. May I have it, please?

Mr. Lamb: Mr. Matthews now advises counsel, Mr. Leibowitz, he doesn't have the letter in question.

(Testimony of Lt. Harvey B. Apperson.)

Q. Well, will you bring that letter in twenty minutes or after you get through? You have it, haven't you?

A. I can either get the original or a copy. Captain Brynildson has a copy, I am sure.

Q. Well, before you get the letter can you tell us in substance what it says?

A. Oh, it says I was to co-operate with the F.B.I. any [149] way they saw fit.

Q. And was there anything else?

A. Not that I can remember offhand, no.

Q. Was it a long letter? A. About a page.

Q. One page, addressed to your personally?

A. Yes.

Q. And you felt with that letter it furnished you with protection for what you were doing?

A. That is right.

Q. Did you request that letter? A. Yes.

Q. Now, Lieutenant Apperson, after the stuff was loaded on the car from the warehouse 1045 the balance of the scrap wasn't loaded yet, was it?

A. There wasn't any scrap loaded.

Q. No scrap loaded at all?

A. Until this material was removed from 1045.

Q. And did you see that all the stuff from 1045 had been loaded?

A. I didn't see. I more or less watched it being removed.

Q. Then there reached a point when you and Mr. Schneider went into the office for the purpose

(Testimony of Lt. Harvey B. Apperson.)

of having Mr. Schneider pay for the merchandise,
for the scrap? A. For the scrap.

Q. Is that true? A. Yes.

Q. And you accompanied him there?

A. That is right.

Q. And you saw him pay, did you? A. Yes.

Q. He had a series of certified checks, didn't he?

A. Yes. [150]

Q. Each check was in round figures, sort of?

A. Yes.

Q. Now, there was a balance due him, wasn't there? In other words, he had given the Government say half a dozen checks and there was a small amount due him, if you recall?

A. They were in round numbers if I remember correctly and he had, there was some change made, yes.

Q. There was some change made? A. Yes.

Q. In other words, he had paid a few dollars more? A. Yes, if I remember correctly.

Q. And did you see if the change was paid to him?

A. If I remember correctly the proper amount of change was given to him.

Q. Cash? A. Yes.

Q. Is that customary, Lieutenant Apperson, for the Government to pay back in cash for if any monies was paid, checks were given in excess of the amount due the Government?

A. There has to be some way of making change.

(Testimony of Lt. Harvey B. Apperson.)

Q. Well, from your own—have you had any experience along those lines? A. No.

Q. Isn't it a fact, Mr. Lieutenant Apperson, that at no time may the Government or any person acting in behalf of the Government ever make change?

Mr. Lamb: To which we object, your Honor, as being highly irrelevant and immaterial.

The Court: He says he don't, he hasn't had [151] any experience; how can he answer that question?

Witness: I can, sir. Many times change is made at the commissary, post exchange, barber shop.

Q. (By Mr. Leibowitz): I didn't ask you that. It is not responsive. I asked him with reference to a contract for the purchase or sale of merchandise.

A. If you are to be that specific, I don't know.

Q. Do you know of any rules or regulations governing that?

A. Not as far as contracts. If you are being that specific, no.

Q. Don't you know, Mr. Lieutenant Apperson, that if there is one cent coming to the purchaser, that cent is refunded by way of a Government voucher?

Mr. Lamb: To which we object as being repetition.

The Court: Sustain the objection.

Mr. Leibowitz: I don't know the grounds of the objection if he made a ground.

Mr. Lamb: Repetition. The objection has already been sustained.

(Testimony of Lt. Harvey B. Apperson.)

The Court: It has been gone over two or three times.

Q. Now after he paid for the merchandise that he had purchased you then left the Airbase, didn't you? A. An hour or so later, yes.

Q. I beg your pardon. [152]

A. An hour or so later, yes.

Q. And you went into town into the city of Great Falls, didn't you? A. That is correct.

Q. And then you went into a Bar Grill?

A. That is right, a bar.

Q. And you had some drinks, did you?

A. That is correct.

Q. Did the F.B.I. furnish any money for you——

A. No.

Q. To entertain Mr. Schneider?

A. No, Mr. Schneider entertained.

Q. Mr. Schneider what?

A. Mr. Schneider bought the drinks.

Q. He bought them but your going into the bar was something that was pre-arranged with Mr. Matthews, wasn't it?

A. I told Mr. Matthews we would go down town.

Q. And he said it was all right? A. Yes.

Q. And as far as you know he followed you?

A. I don't know. I presume so.

Q. Well—— A. I presume so.

Q. And I understand that after you were in the bar for a few moments you went into the men's room, didn't you? A. That is right.

(Testimony of Lt. Harvey B. Apperson.)

Q. Was that done by pre-arrangement with Mr. Matthews [153] that you should go into the men's room? A. I was to be searched, yes.

Q. And that is the reason you went into the men's room? A. Possibly, yes.

Q. But that was done by pre-arrangement with Mr. Matthews?

A. Not going directly into the men's room, no.

Q. Well, at least to be away from the public?

A. Yes.

Q. And the only place you could think of was downstairs or upstairs—I don't know where it is—is in the men's room? A. Yes.

Q. Mr. Matthews followed you immediately after you left Mr. Schneider and went into the men's room, didn't he? A. Yes.

Q. And you were searched there, weren't you?

A. Yes.

Q. You went upstairs after that, did you, back into the dining room?

A. I went back into the bar.

Q. In the bar and you continued to have drinks, did you?

A. I think we finished one of the drinks we started.

Q. And then you just picked yourself up and went outside? A. That is right.

Q. You arranged to go into Mr. Schneider's room?

A. That is right. I didn't arrange.

(Testimony of Lt. Harvey B. Apperson.)

Q. I beg your pardon.

A. It was at his suggestion.

Q. At his suggestion but you had arranged in advance [154] that you were going to get paid what at his room? A. No, not exactly.

Q. Well, did Mr. Matthews tell you the most appropriate place for payment would be in his room? A. No.

Q. He didn't? A. No.

Q. Well, did you request Mr. Schneider to pay you right at the bar?

A. I suggested that we settle up.

Q. Right at the bar?

A. Yes, I think I did there at the bar.

Q. But Mr. Schneider suggested that you had better after you people went to his room?

A. That is right.

Q. And you did go into his room?

A. That is right.

Q. Did Mr. Matthews tell you how long you should stay in his room? A. No.

Q. Did Mr. Matthews tell you just as soon as you got some to make your departure quickly?

A. I don't think that was discussed at all.

Q. Did Mr. Matthews tell you you should ask for an envelope? A. No.

Q. He didn't? A. No.

Q. That suggestion came from you, did it?

A. I suggested it. As a matter of fact the thought came just at that time.

(Testimony of Lt. Harvey B. Apperson.)

Q. Came from you? A. Yes. [155]

Q. Now, how long did you spend in Mr. Schneider's room?

A. Oh, maybe fifteen minutes, maybe forty-five. I am not sure. I didn't check it.

Q. And during that time Mr. Schneider showed you certain courtesies by giving you drinks, didn't he? A. He gave me a drink?

Q. And you liked it and asked for some more?

A. I think I did ask for another but I am not sure.

Q. But you knew at that time he was going to be locked up very quickly, didn't you?

A. I presume so, yes.

Q. Now, after the money was given to you—well, I withdraw that. Mr. Schneider offered you first, you said—well, you used the expression “quid.” Let's understand what that means. What does quid mean? A. I don't know.

Q. You don't know?

A. I don't have any idea what a quid means. Two or three people since then have suggested meanings, but that was the first time I ever heard that expression.

Q. Well, you didn't know when the word “quid” was used whether it meant a lot of money or something else?

A. Well, I was pretty sure because he said “a couple of G's” right after that.

Q. All right, what did they say about a quid?

(Testimony of Lt. Harvey B. Apperson.)

A. He didn't say it at the time. Some people say a quid is English money. I am not sure.

Q. Let's see, it might be worth how much? I want to get an idea what it is worth. It is less than \$2,000 any way, we agree on that? A. Yes.

Q. Now, he first offered you how much money, Mr. Lieutenant Apperson?

A. Well, he said: "Half a quid to a couple G's."

Q. Well, then he sort of handed you some money, didn't he? A. In the room, yes.

Q. And how much money was that the first time he handed you some money and you expressed an opinion, or well you thought it was unfair how much he gave you? A. He didn't hand me.

Q. He counted off a certain amount of money?

A. I don't remember him counting off anything. He said he would give me \$1400.

Q. That was the first mention of amount at that moment?

A. Of any specific amount. He said he would give me half a quid up to a couple of G's the day before, and this was, this time he said I will give you fourteen, thirteen or fourteen.

Q. But you asked him for a little more, didn't you?

A. No, I did not. I didn't ask him for anything.

Q. You didn't quibble for anything, did you?

A. No. [157]

Q. Isn't it a fact at first he offered you \$1,000;

(Testimony of Lt. Harvey B. Apperson.)

first gave you \$1,000, and you said that wasn't enough? A. No.

Q. You didn't say that to him? A. No.

Q. Well, after the payment was made, Mr. Apperson, you left, didn't you?

A. Yes, that is right.

Q. And you went downstairs and saw Mr. Matthews? A. That is right.

Q. Did you give him the money right then and there? A. Yes.

Q. And then you left?

A. Yes, I went into the bar.

Q. You went where?

A. I went into the men's room with Mr. Leonard and he searched me.

Q. Did they say why they were searching you?

A. No, I presume, I thought——

Q. Well, tell us why?

A. To find out if I had kept any of the money Schneider gave me.

Q. All right, did Mr. Matthews ask you how much did he actually give you?

A. Oh, I don't think he did. I don't remember. I think I handed it to him.

Q. And said: "That is the money"? [158]

A. I think I just handed it to him and said: "Room 340."

Q. Did you tell him all the money given to you by Mr. Schneider is contained in the envelope?

A. I didn't say one way or another.

(Testimony of Lt. Harvey B. Apperson.)

Q. Pardon.

A. I didn't say one way or another.

Q. Where was Mr. Leonard?

A. I presume he was in the lobby.

Q. In the same hotel? A. Yes.

Q. Did Mr. Leonard walk over to you and ask you to come downstairs?

A. Well, we didn't go downstairs. He walked up to me.

Q. In other words, he didn't take your word for it, he made a search?

A. He said he would like to search me.

Mr. Leibowitz: May I have a few moments? I just want to consult counsel and collect my thoughts.

The Court: We will take a recess for ten minutes and you will get an opportunity to consult with counsel. (9:45 a.m.)

Court resumed, pursuant to recess, at 10:55 a.m., at which time the jury, defendant, and all counsel were present.

The Court: Gentlemen, you may proceed. [159]

Cross-Examination

(Continued)

By Mr. Leibowitz:

Q. Lieutenant Apperson, did you obtain that letter from the Captain?

A. Beg your pardon.

Q. Did you obtain the letter you said you might

(Testimony of Lt. Harvey B. Apperson.)

from the Captain out in the hall? Is that the man you were talking about had the letter?

A. No, I didn't obtain it.

Mr. Lamb: I have it.

Mr. Leibowitz: May I have that, please?

Mr. Lamb: Yes. There are two letters.

Mr. Leibowitz: I am perfectly willing to have these letters go in evidence.

Mr. Lamb: Just have them marked.

Q. (By Mr. Leibowitz): Now I show you Defendant's Exhibit 9 and ask you if that is the letter that Colonel Chennault gave you, a copy of the letter, anyway?

A. That is the letter to the best of my knowledge.

Q. Now is there another letter he had given you?

A. I have a copy of the letter Mr. Matthews wrote to Colonel Chennault.

Q. Yes, but have you another letter from Colonel Chennault? A. This is the only one.

Q. Now I show you Defendant's Exhibit 10 and ask you [160] if this is a copy of the letter Mr. Matthews had written to Colonel Chennault.

A. That is the letter.

Mr. Leibowitz: May I be permitted to read those letters to the jury?

The Court: Just a minute. Do you agree to it?

Mr. Lamb: He hasn't offered them?

Mr. Leibowitz: I don't know the procedure. I offer them in evidence.

(Testimony of Lt. Harvey B. Apperson.)

The Court: You offer them in evidence, Exhibits 7 and 8; and you have no objection?

Mr. Lamb: I have no objection.

The Court: Very well, they are received in evidence. The exhibits should be marked 8 and 9.

(Whereupon said Defendant's Exhibits Nos. 8 and 9, offered and received in evidence, are a part of this record.)

(Whereupon Mr. Leibowitz read Defendant's Exhibits Nos. 8 and 9 to the jury.)

Q. (By Mr. Leibowitz): Now, Lieutenant, in addition to enlisting the aid of or getting the consent of the Colonel you also stated that you went to the Provost Marshal, I think?

A. No, I went to the Wing Staff Judge Advocate.

Q. Beg your pardon.

A. I went to the Wing Staff Judge Advocate.

Q. And is he some legal officer attached to the Base? A. That is correct.

Q. And did you see him before you had gone over to see the Colonel? A. Yes.

Q. Was he the man that referred you to the Colonel? A. Yes.

Q. Did you tell him that you would like to do those things?

A. I told him I would co-operate in any way that the F.B.I. saw fit.

Q. Well, he didn't tell you to go ahead, did he?

A. Well, he didn't have the authority.

(Testimony of Lt. Harvey B. Apperson.)

Q. And you didn't have the authority to go ahead if he didn't? A. Well, of course, not.

Q. And then following that, of course, you went to the Colonel and got the permission?

A. Yes.

Q. Now you stated that some time in November, 15th, or 18th, or 16th, you put in a telephone call to New York City? A. That is right.

Q. And you reversed the charge, didn't you?

A. That is right.

Q. Did you use the telephone in Lieutenant Green's office? A. I used my own.

Q. You used your own telephone?

A. At my office.

Q. In your office? Is that a pay telephone? [162]

A. No, it is a Government telephone.

Q. You just picked up the telephone and asked for the operator, did you?

A. We have our own operator. I called the operator and told her I wanted to put in a long distance telephone call to New York.

Q. You are sure that is what you did?

A. Yes.

Q. And that record—does the girl at the office make a notation of that fact?

A. I don't know. I do not think so. Yes, but I am not sure.

Q. Now, Mr. Lieutenant Apperson, isn't it a fact that you didn't use your own telephone at the time you made the telephone call to New York City and called Mr. Schneider?

(Testimony of Lt. Harvey B. Apperson.)

A. Did you say that I didn't?

Q. You didn't use your telephone?

A. I used the telephone at the Base, the salvage office.

Q. And that was the telephone that you used to make that telephone call?

A. I said I just made that telephone call a collect call to New York.

Q. And that was the telephone you used?

A. I don't know whether it is the same instrument or not.

Q. Well, isn't it a fact, Lieutenant, that you used a pay station telephone to make that telephone call?

A. I did not.

Q. Well, I will give you the telephone number. The telephone number is Great Falls 9795. You don't recall that, do you? Would you say that you didn't use that telephone to make that telephone call to New York City?

A. Not that I recall, no.

Q. You didn't make two telephone calls to New York City, did you?

A. I made one collect telephone call to New York City.

Q. And isn't it a fact, Lieutenant Apperson, when you used that telephone you told Mr. Schneider "You should come up here"?

A. I told Mr. Schneider he would have to arrange—he had previously told me he would come to Great Falls, and I told him he better come and get

(Testimony of Lt. Harvey B. Apperson.)

his stuff or I would send out a registered letter of forfeiture.

Q. But you wanted him up here, didn't you?

A. It was immaterial to me whether he came or not.

Q. You tried to impress on him that he would have to make arrangements to be here?

A. I told him he would have to make arrangements to remove the salvage he purchased.

Q. Well, were you very much concerned about Mr. Schneider performing his contract?

A. I was because I needed the warehouse space.

Q. Well, you had a contract which you can enforce with the Government if he didn't show up?

A. I felt in fairness to him why should I be hard-boiled and make him lose his deposit. I felt in fairness to him that it was possible he didn't understand the contract.

Q. You know, Lieutenant Apperson, you felt the price was pretty high?

A. I said I felt it was a very good return to the Government, and it is.

Q. Were you concerned about the Government losing the benefit of a good price like that?

A. They wouldn't lose the benefit of the sale and he would have lost his.

Q. That is right.

A. And he could have been charged whatever it cost the Government to remove that and re-sell it.

Q. In your experience attached to this office had

(Testimony of Lt. Harvey B. Apperson.)

you ever made a telephone call long distance or otherwise requiring people to come and call for their merchandise?

The Court: That is not a proper question. It is not based on testimony. This isn't a question of coming and removing it. Be fair with this witness.

Mr. Leibowitz: I certainly am very fair with him.

Q. Do you deny, Mr. Lieutenant Apperson, that you didn't use the telephone at your office but used a pay station [165] telephone?

Mr. Lamb: We object to that on the ground it is repetition.

The Court: Repetitious. Sustain the objection.

Q. Do you know how much the telephone bill was for that call? A. No.

Q. Do you know how long you spoke to the man on the telephone? A. No.

Q. That telephone call was placed you recall on the 15th day of November, 1948?

A. I presume the 15th.

Q. And it cost \$5.10 to make that telephone call?

A. I don't know how much it cost.

Q. Mr. Lieutenant Apperson, when did you make that telephone call, in the morning or in the afternoon or in the evening?

A. I don't exactly remember.

Q. Well, would you say it was during business hours you made it?

A. It was during business hours.

Q. It was during business hours?

(Testimony of Lt. Harvey B. Apperson.)

A. It was during business hours.

Q. Can you recall whether it was in the morning or afternoon? A. I don't recall.

Q. Well, perhaps I will show you a letter from the New York Telephone Company addressed to Mr. M. Schneider, 269 Cherry Street, New York, and I am going to ask you to [166] read the letter and tell us if it refreshes your recollection as to whether or not you put a long distance telephone call in from a dial station from Great Falls?

The Court: Before you answer that question let that letter be shown to counsel.

Mr. Leibowitz: Oh, yes. Don't answer it.

Mr. Leibowitz: Is it all right now, your Honor?

The Court: Yes.

Q. Now, the question is does that letter refresh your recollection?

A. I remember putting in a collect telephone call to Mr. Schneider but I am sure I put it in at my office.

Q. Is your office telephone number the same telephone number that appears there, Great Falls——

A. I can't remember the extension number but the Base telephone number is 7651.

Q. Is that the telephone number that appears on that?

A. The only thing that appears here is Spring——

Q. No, number? This number?

A. That is 9795.

(Testimony of Lt. Harvey B. Apperson.)

Q. Great Falls? A. I presume. Yes.

Q. That isn't the Base telephone number?

A. No.

Q. Now, is there a telephone booth at the Air-base? A. There are quite a few, yes.

Q. Does it bear the number Great Falls or would it bear [167] some other exchange?

A. I would presume it would bear Great Falls.

Q. You presume so, do you know or don't you know? A. Yes, I presume so.

Q. You know that?

A. I don't know. This isn't my name on this anyway.

Q. Well, what name appears?

A. Alberson.

Q. Well, are you quibbling that you are not the individual?

A. I don't know whether I am or not. This is new to me.

Mr. Leibowitz: I will offer this letter in evidence.

Mr. Angland: It is objected to, no proper foundation and it hasn't been marked.

Mr. Leibowitz: In New York we mark it for identification and then offer it.

The Court: Mark it for identification. He doesn't know anything about this letter. That is my understanding of your answer, is that right?

Witness: Yes.

Mr. Angland: No proper foundation.

The Court: I don't think so either. I think you

(Testimony of Lt. Harvey B. Apperson.)

ought to have somebody offer some substantial testimony as to where this letter came from and who wrote it.

Mr. Eickemeyer: If the Court please, it seems to me Mr. Leibowitz would have the right to ask a question [168] direct of this witness for impeaching purposes as to whether or not, on that day as to whether or not on the 15th day of November, 1948, as to whether or not he made a call to Meyer Schneider collect to his phone number Spring 7-2780, and as to whether or not that call was not started at 10:47 a.m. and lasted six minutes, and as to whether or not that call was made from some Great Falls phone No. 9795. Now he can answer that question then yes or no and we have a right to go into the matter later.

The Court: He already answered it two or three times, and has gone over it in his examination of this witness, and now you ask permission to ask direct the one question?

Mr. Eickemeyer: Including all of this information.

The Court: With the numbers?

Mr. Eickemeyer: Yes.

The Court: On there?

Mr. Eickemeyer: Yes.

The Court: Well, you may ask him the question if he knows. Did you hear and understand the question?

A. Yes, sir. I made a telephone call to Schneider

(Testimony of Lt. Harvey B. Apperson.)

from my office collect. As to the time of it I can't exactly remember.

The Court: You don't remember the time?

A. No. [169]

The Court: Where did you make it?

A. From the salvage office.

The Court: From your office? A. Yes.

The Court: Salvage office? A. Yes.

The Court: He has answered it.

Mr. Eickemeyer: Now, if the Court please, it is very difficult for anyone to get information from the telephone company. Now I would request on the part of the defendant that Lieutenant Apperson get from the Army Airbase if there is a record of that call he claims he made, and if there is no record and the Army can get this information from the telephone company from that call, and there would be a record in Great Falls. You understand, if the Court please, if it is a reverse call from a telephone call the records are all in New York and we can't get them.

Mr. Lamb: Mr. Eickemeyer, if that is what you are looking for, I will gladly furnish you with the Army records.

The Court: Do I understand that is the Army record of the phone.

Mr. Lamb: That is correct, your Honor.

Mr. Eickemeyer: That is on the 16th.

Mr. Lamb: At this time we will have this particular exhibit marked. The witness has been re-

(Testimony of Lt. Harvey B. Apperson.)

quested to [170] furnish that record of the long distance phone call from his extension to Meyer Schneider, and we are now asking that Army record be offered as Plaintiff's Exhibit 11, and we now offer it.

Mr. Leibowitz: That is your case; that is not our case.

Mr. Lamb: You asked us to furnish it and we are furnishing.

Mr. Leibowitz: You don't have to identify it first that is the telephone call? We have a letter from the New York Telephone Company as to this.

Mr. Lamb: We are merely acceding to the request of your co-counsel. You asked us to furnish you with the Government record and we have now furnished you with it.

The Court: All right, either accept it or object to it. That is what you called for.

Mr. Eickemeyer: As I understand it—are you offering this now?

Mr. Lamb: Yes, that is correct.

Mr. Eickemeyer: Well to this exhibit, Plaintiff's 11, the defendant objects upon the ground and for the reason that it is incompetent, irrelevant and immaterial and no proper foundation having been made. We don't know who made this, these notations, or where it came from, and there certainly isn't any foundation laid for the introduction of this [171] as an exhibit at this time. Just because they say it is a record that doesn't make it admissible.

(Testimony of Lt. Harvey B. Apperson.)

The Court: Yes. The same objection would be made to the letter.

Mr. Leibowitz: Of course, that isn't a letter from the telephone company.

The Court: Can you identify this?

Mr. Lamb: Yes.

The Court: All right, I will sustain your objection for the present. He says he can identify it and prove it. Now with that very same objection Mr. Eickemeyer made here I will overrule the introduction of that letter.

Mr. Eickemeyer: The letter from the company?

The Court: Yes.

Mr. Eickemeyer: If the Court please, we take exception to the Court's ruling because the——

The Court: All right, state your objection.

Mr. Eickemeyer: Upon the ground and for the reason it has already been admitted into evidence and upon the ground and for the reason that the Government has consented that the letter be introduced and made no objection to it.

Mr. Angland: No such consent.

The Court: What letter are you talking about?

Mr. Eickemeyer: Oh, I am—I beg your pardon.

The Court: Sure, you are mistaken. Go ahead, let's get going. [172]

Q. (By Mr. Leibowitz): Lieutenant Apperson, can you tell us how many pounds of merchandise that stuff from the 1045 warehouse weighed?

A. I would make a rough guess but I wouldn't guess within five or six hundred pounds.

(Testimony of Lt. Harvey B. Apperson.)

Q. That is all right.

A. I could guess maybe 1,000 pounds.

Q. How much?

A. Maybe 1,000 pounds but I don't know.

Q. 1,000 pounds?

A. That is a very wild guess.

Q. Now that is the stuff which you were talking about is worth \$8,000, is it not?

A. It cost the Government \$36,000.

Q. I am not asking you how much it cost the Government. You said——

A. It might be worth \$50,000 to you and it might be worth five to me.

Mr. Leibowitz: I move to strike out those answers, your Honor. They are not responsive.

The Court: Well, the latter part of it is not responsive.

Q. I asked you—Lieutenant Apperson, you found out that they were sold to the public for \$8,000? A. That is what I understand. [173]

Q. You understand the 1,000 pounds of merchandise was \$8,000, so you understand?

A. Well, if you figure it that way, but really I say again I don't know how much it weighed.

Q. Now isn't it a fact, Lieutenant Apperson, that that stuff wasn't worth \$2,000?

A. I don't know.

Q. Well, you were the Airbase salvage officer?

A. I would say it was worth considerably more than \$8,000.

(Testimony of Lt. Harvey B. Apperson.)

Q. Well, do you have a record of those items in your office? A. Yes.

Q. With its prices? A. Yes.

Q. And you have computed that to run to over \$8,000?

A. The record I have amounts to \$36,000. I keep a record of how much the Government purchased it for. I presume that is how much they purchased it for.

Q. Now, Lieutenant Apperson, well have you got the record how much it cost the Government on the scrap material? A. In some cases, yes.

Q. Well, that was Government stuff, wasn't it? A. Yes.

Q. How much did that amount to?

A. I don't know.

Q. Approximately?

A. I wouldn't make a guess.

Q. Now, you have testified there was a lot of abandoned material you just threw in a heap around the place? A. That is right. [174]

Q. Have you got a record how much that cost the Government? A. No.

Q. Originally? A. No.

Q. Why that may have cost the Government one million dollars, maybe?

A. An abandoned piece of property might be a crashed aircraft.

Q. That is true, and that might cost the Government over a million dollars?

(Testimony of Lt. Harvey B. Apperson.)

A. That is right, it might.

Q. Now, Lieutenant, you knew that when you loaded the car from there, got the merchandise out of warehouse 1045, that there wasn't the slightest chance for Mr. Schneider ever to take over this merchandise? You knew that, didn't you?

A. When we loaded it, yes, I knew he couldn't take it away.

Q. As a matter of fact you knew it wouldn't be moved even? A. That is correct.

Q. That was just merely an act, a form you had to go through, isn't that so? It was an arrangement you had with the F.B.I.?

A. Well, I loaded it, yes.

Q. That was the procedure that was arranged that you followed? A. Yes.

Q. You certainly didn't expect Mr. Schneider to have [175] any money if the stuff remained in the warehouse at 1045? A. No.

Q. So you had to have it loaded, isn't that it?

A. Yes.

Q. Now, immediately after it was loaded and you went away from the Base when was that stuff unloaded?

A. It was unloaded the next afternoon.

Q. The next afternoon—was the scrap material already inside the car? A. Yes.

Q. Lieutenant Apperson, did you have the right or the authority after the stuff was in the car to send it off to Mr. Schneider?

(Testimony of Lt. Harvey B. Apperson.)

A. Yes, I could have sent it off to him.

Q. Without violating any rule and regulation?

A. No.

Q. Without having been——

A. I wouldn't have sent the good stuff to him, no.

Q. Of course you wouldn't. I just asked you if you had the right to send that stuff through without any permission from anybody to Mr. Schneider in the very form that it was put on and the very manner that it was put on?

A. Yes, I could have sent it to him.

Q. Without getting paid for the merchandise?

A. Well, I had better explain a little. I am responsible for that equipment. If I had sent it to Mr. Schneider, I would have had to pay for it myself. [176]

Q. You would be responsible to whom?

A. To the United States Government.

Q. You mean a financial responsibility only?

A. That is right.

Q. And that is the only responsibility?

A. That is right.

Q. As long as you paid for the merchandise you would have been absolved from any responsibility?

A. I would have had to pay for the amount it cost the Government. That is what we call pecuniary liability.

Q. You would have to pay the \$36,000?

A. I presume so.

Q. And that is all?

A. I presume so.

(Testimony of Lt. Harvey B. Apperson.)

Q. No one could be reproached for it?

A. I imagine they would. I don't know——

Q. I beg your pardon.

A. I imagine they would want to know why I sent it to him and was that big a fool.

Q. And that is all, just why?

A. I presume. I have never done it before. I don't know.

Q. I haven't asked you whether you done it or not. I know you didn't. A. I don't know.

Q. Now, you said you were familiar with a manual, didn't you? A. That is correct. [177]

Q. Well, is there any manual which gives you the right to send the merchandise through to New York City as in this case? A. No.

Q. Without getting paid for it and without asking anybody's permission? A. No.

Q. As a matter of fact there isn't any such, you couldn't find any such permission in there, could you?

A. No. I am guessing that. I have never done this before so I don't know.

Q. In other words, you wouldn't last a minute if you ever took stuff right out of that warehouse?

A. That is right.

Q. Without the permission of somebody in authority? A. That is correct.

Q. And put it on that car and send it off; even if you were paid for the merchandise, you couldn't do it?

A. I don't know. All I know is I am responsible for a certain amount of Government property.

(Testimony of Lt. Harvey B. Apperson.)

Q. As a matter of fact if you were able to get a million dollars for stuff worth ten thousand dollars, you couldn't get that stuff or send it off?

A. That is correct.

Q. It would have to go through a certain amount of red tape? A. I have in other cases.

Q. I haven't asked you in other cases.

Mr. Lamb: Let him answer. [178]

A. I am trying to explain something.

The Court: Treat this witness fairly. Don't argue and argue and go over and over again. Let's get through sometime.

A. I can ship other salvage material to any other base by request of another flight officer or another salvage officer, and I can ship him anything I feel he should be on requisition.

Q. I don't question it, but while you are doing that it is still Army property?

A. I don't know whether I could ship him this stuff. I wouldn't. I will put it that way.

Q. You would not what?

A. I wouldn't ship it to him without being paid for it. Does that answer your question?

Q. I will go further. Would you ship it to him even if you got paid one hundred thousand dollars?

A. No, not if I were paid one hundred thousand dollars.

Q. I mean if you turned in the returns in to the Government? I am not saying you personally.

The Court: You have no right to argue with this witness; and treat him fairly.

(Testimony of Lt. Harvey B. Apperson.)

Mr. Leibowitz: I am certainly trying to.

Q. Now if you received a hundred dollars as an individual from Mr. Schneider for stuff worth a maximum to the Government [179] of \$36,000, and you take that check and turned it into the Government, would you be permitted to accept it in that form?

A. I understand what you are getting at. I can't make any spot negotiation sale for \$100 or \$10,000.

Q. And this was not a spot negotiation sale?

A. It was not.

Q. And it couldn't have been shipped in that form?

Mr. Lamb: Repetition.

The Court: You have gone far enough.

Mr. Leibowitz: All right. That is all.

Redirect Examination

By Mr. Lamb:

Q. Lieutenant, the question has been asked you on cross-examination concerning whether or not you had records in your office of the materials which were contained in the building 1045 and from which I believe you stated that the records showed their value to be \$36,000, that was the situation, was it not?

Mr. Leibowitz: He didn't say the value; he said the cost to the Government.

Mr. Lamb: Cost to the Government. [180]

Q. I will show you Plaintiff's Exhibit 12 and ask

(Testimony of Lt. Harvey B. Apperson.)

you if those are the official records contained in your office of the materials contained in the building 1045, showing the total cost of those articles which were removed from building 1045 and put into the freight car of Meyer Schneider?

A. These were my records.

Mr. Lamb: At this time we will offer in evidence Plaintiff's Exhibit No. 12.

Mr. Leibowitz: I just want to ask one question. Is this your handwriting?

A. No.

Mr. Leibowitz: No objection.

The Court: It may be received in evidence.

(Whereupon said Plaintiff's Exhibit No. 12, being offered and received in evidence, is a part of this record.)

Whereupon Mr. Lamb described Plaintiff's Exhibit No. 12 to the jury.

Q. (By Mr. Lamb): Lieutenant Apperson, some question has been made concerning this collect telephone call. How many collect telephone calls did you make to the defendant Meyer Schneider?

A. One.

Q. You have testified that was made from your office out at the Airbase? A. That is right.

Q. From your extension?

A. That is as well as I remember it was. Yes, I am sure it was.

Q. Did you make any other call to Meyer Schneider that you yourself initiated whether it was col-

(Testimony of Lt. Harvey B. Apperson.)

lect or not other than the one made from your salvage office? A. No.

Q. Lieutenant Apperson, you were asked on cross-examination whether Mr. Matthews of the F.B.I. had suggested to you that Meyer Schneider be entrapped or a trap set for him?

A. No, he very carefully advised me that not to make any omissions to him whatever.

Q. Will you go into detail as to the exact instructions that were given you by Mr. Matthews and by the Staff Judge Advocate and Colonel Chennault and any other instructions that were given you concerning the possibility of any form of entrapment or anything of that sort?

A. As best I remember they told me——

Mr. Eickemeyer: May I object to it, your Honor. I think the word entrapment is a legal term and I think he ought not to use the word "entrapment."

The Court: Well, if he instigated——

Mr. Eickemeyer: He could use "trap."

Q. Just go into details?

A. The best I can remember, Mr. Matthews came out to the Base on the morning of the 23rd and we sat down and had [182] a conference on this thing. And he told me to go ahead and take whatever he offered me and to go ahead and fall in line with what he wanted to do. At the time I felt that it was necessary to protect myself. I don't take bribes and I wanted to be certain if I do take any money like that that I know what to do with it. So Mr. Mat-

(Testimony of Lt. Harvey B. Apperson.)

thews, we then contacted the Colonel and explained to him just what we were going to do. Mr. Matthews very carefully told me not to make any ovations to him and not solicit him in any manner at all and let him more or less carry the ball.

Q. And did Mr. Matthews advise you at that time he consulted with both his district office of the federal bureau of investigation in Butte and me?

A. Yes, he did. He said he had called Mr. Lamb himself.

Q. He didn't advise you he had contacted the F.B.I. office in Butte?

A. I don't remember whether he did or not.

Q. But he did advise you he consulted with me in the United States Attorney's office concerning the probability of your getting into difficulties and the instructions of cooperation you should give?

A. I think he did, yes.

Q. And were you advised by Mr. Matthews that you had to do this or it should be entirely voluntary?

A. No, he told me I didn't have to at all. It was [183] voluntary whatever I wanted to do, whatever I wanted to do.

Q. But you were cautioned at great length not to urge or to initiate any action?

Mr. Leibowitz: I object to counsel, I think it is leading. I think Lieutenant Apperson ought to answer the question, not Mr. Lamb.

(Testimony of Lt. Harvey B. Apperson.)

Mr. Lamb: I am sorry I fell into the same habit you have.

The Court: Yes, I will sustain your objection.

Q. Will you explain in complete detail the conversation you had with Mr. Matthews concerning your actions during the day of November 23rd?

Mr. Eickemeyer: If the Court please, I think this is highly irrelevant and immaterial, a conversation between two of the Government witnesses on a plan made by them. The testimony is the facts that are testified to here that the jury is to base its verdict on and not any conversation between the F.B.I. and the Lieutenant.

Mr. Lamb: If the Court please, the witness was asked upon cross-examination—I didn't go into it on direct because it would not have been proper. He was asked by Mr. Leibowitz if plans were made by Mr. Matthews to trap Mr. Schneider and that opens up the complete field, so Lieutenant Apperson, I believe the law is such that Lieutenant Apperson may now testify to his complete instructions. He can testify, he is entitled to explain all of the instructions which were given to him, and the defense counsel opened up the field themselves.

Mr. Eickemeyer: Not conversations, if the Court please.

The Court: Well you went into it pretty well. I think I will allow him to explain what occurred so there won't be any false impression conveyed to the jury about it.

(Testimony of Lt. Harvey B. Apperson.)

Q. Explain in detail?

A. Like I said before, he told me to go ahead and take any offers Schneider made, but he told me not to make any requests or solicit him in any manner.

Q. Did you also seek the advice of the Wing Staff Judge Advocate? A. I did.

Q. In that connection?

A. I asked Colonel Abdalah—well, I merely told Mr. Matthews I wanted Colonel Abdalah in on this thing because he was trained legally and that in case the thing flew backwards or in case somebody tried to charge me with accepting a bribe, why I wanted to be protected.

Q. All right, then you were asked on cross-examination whether when you went into Murrill's Bar and went back into the men's room if that was by reason of the pre-arrangement that you had with Mr. Matthews, and also you were asked on cross-examination whether you had arranged with Mr. Matthews [185] for the payment to be made either in Murrill's Bar or the arrangement had been made that the payment was to be made in Schneider's room. Now will you explain in detail the arrangements that were made with you with reference to the possible pay-off of the bribe from Meyer Schneider?

A. Mr. Matthews had told me that if there was any money to be passed, any money was to pass between us that he would like to have witnesses. Well, I told Mr. Matthews that I would do anything I

(Testimony of Lt. Harvey B. Apperson.)

could. At the time in Murrills I more or less, well, I delayed, I stayed at Murrills as long as we could hoping he would pay off in front of any witnesses that might be there. And we also had a pre-arranged signal that I should drop a handkerchief or napkin when he had paid off. And the searching, Mr. Matthews said it would be better if I was searched before to ascertain how much cash I had in my pocket so that charges may not be brought against me saying I had pocketed some of his money or something to that effect. Afer we left Murrill's Bar and went to the Park Hotel I suggested we have another drink and hoping he would go into the bar and pay me and thereby still having witnesses. Schneider said he had some good Scotch in his room and let's go up and of course we went into his room.

Mr. Lamb: You may inquire. [186]

Recross-Examination

By Mr. Leibowitz:

Q. Lieutenant Apperson, you were shown this list of merchandise which is marked Plaintiff's Exhibit 12. Now I want you to examine it carefully and tell the jury and his Honor if there is, if your name appears on any of these papers? Just answer if your name appears.

A. My name or my office. To my knowledge it doesn't but I will look again.

Mr. Lamb: Let him examine the papers.

A. No.

(Testimony of Lt. Harvey B. Apperson.)

Q. Lieutenant Apperson, is there one notation, figures or otherwise that bears your handwriting?

A. No.

Q. Now do you know Mr. John L. Riffle?

A. Major John Riffle?

Q. Major John Riffle, do you know him?

A. Yes.

Q. Was he in control of this merchandise?

A. Before it came to me, yes.

Q. Can you tell us when it came to you?

A. Not the exact date, no.

Q. Well, approximately? Well, to help you along, did it come to you in the month of September?

A. I think so but I am not sure. If I might have that again I can tell you. [187]

Q. Can you tell us from that when it came to you? A. Yes.

Q. From any notation that appears upon it when it was shipped to you? A. Yes.

Q. There is something here that indicates to you when it was turned over to you, is that your testimony? A. It is.

Q. I just want to cover up the dates, that is all. Can you tell us the notation if you can find it?

Mr. Lamb: This is argumentative. It is not fair cross-examination.

The Court: No. Show it to him. The witness said he can identify it when it came to him.

(Testimony of Lt. Harvey B. Apperson.)

A. Major Riffle—I received this, my office received it on the 8th of November.

Q. I beg your pardon.

A. September 30th it came to me.

Q. That is your testimony? A. Yes.

Q. There is no question about that?

A. We keep our records. I process many of these things. I don't know exactly what exact date, but Major Riffle sent it to me the 30th of September, 1948.

Q. All right, you are sure about that, are you?

A. As sure as I can from my records. I can't tell you the exact date or time that those came to me. [188]

Q. Let's understand what came to you. Is that what you are talking about came to you, this list?

A. I think so, yes.

Q. Did the merchandise come to you?

A. Soon thereafter.

Q. How soon thereafter did it come to you?

A. Within a few days.

Q. And where did it come from?

A. The Base Quartermaster, Major Riffle.

Q. And it was put into 1045?

A. That is right.

Q. And the Base Quartermaster would have a record of that when they shipped it, wouldn't they?

A. Yes.

Q. Now, who is Keith—do you recognize that?

(Testimony of Lt. Harvey B. Apperson.)

A. Keith Christianson. He was a Tech-Sergeant who was one of my assistants.

Q. And he is known as a storekeeper?

A. No, anyone of us could have been a storekeeper.

Q. Well, I am referring to the title because his name appears on it.

A. Oh, as a dual capacity.

Q. No, we are just referring to this here.

A. I will make him a storekeeper if that will satisfy you.

Q. I am not asking you to satisfy me. I got the word, term "storekeeper" from this notation here?

A. He is a storekeeper.

Q. Yes, and it is right over here. That is how they designate it as storekeeper?

A. That is right.

Q. I am not unfair to you about that, am I?

A. He is a storekeeper.

The Court: Start on something else.

Mr. Leibowitz: I just wanted to follow that thing through. I think it is very important.

The Court: Well, the time is so short I think we had better end here.

(Whereupon the Court admonished the jury.)

The Court: Court is in recess until 1:30 this afternoon. (December 14, 1949) (12:00 noon). [190]

Court resumed, pursuant to adjournment, at 1:30 o'clock p.m., on December 14, 1949, at which time

(Testimony of Lt. Harvey B. Apperson.)

the jury, defendant, and all counsel were present.

The Court: Now, Gentlemen, where were we? Were you examining the witness?

Mr. Leibowitz: Yes, I just want to ask him just a few more questions.

The Court: Very well, proceed.

LT. HARVEY B. APPERSON

resumed the stand and testified as follows:

Recross-Examination
(Continued)

By Mr. Leibowitz:

Q. Lieutenant Apperson, now you were instructed by Mr. Matthews not to originate anything?

A. That is right.

Q. Make any overtures to him, am I correct?

A. That is right.

Q. And after you made this arrangement and got the approval of the Colonel to start this thing in motion you started it off by inviting Mr. Schneider to your office, didn't you?

A. I had an appointment with him prior to seeing the Colonel.

Q. But you expected him at your office, didn't you? A. Yes. [191]

Q. And you took a couple of jackets or something which you threw in front of him, didn't you?

A. No, I threw him the file with those vouchers, those turn-in slips.

(Testimony of Lt. Harvey B. Apperson.)

Q. You did what?

A. I placed the file with those turn-in slips in front of him.

Q. And that is how you started the thing off?

A. If it was started that way.

Q. You intended to have him, catch him, didn't you?

Mr. Lamb: To which we object. It calls for a conclusion on the part of the witness.

Mr. Leibowitz: I think it is proper to cross-examine. I just want to know what his intention was about it.

Mr. Lamb: It calls for a conclusion.

The Court: What are you trying to make him say? What are you trying to get at?

Mr. Leibowitz: Well, what I am trying to do is to show he started the thing off.

The Court: Started what thing off?

Mr. Leibowitz: To start the plan of entrapping Mr. Schneider off, not keeping quiet but throwing a file at him which is just as effective probably as talking about it.

The Court: Well, all right. Was this the [192] beginning?

The Court: Was this the beginning of the plan or whatever it was?

A. Yes, sir. I just put this thing in front of him to see what he would do.

Q. Well, what was it you put in front of him?

A. The file with the turn-in slips in it.

(Testimony of Lt. Harvey B. Apperson.)

Q. With what slips?

A. These turn-in slips. These 447s we call it.

Q. What did you do that for? Was it pursuant to a conversation you had with him?

A. No, sir, I just told him what I had.

Q. That is, you mean what salvage or property you had? A. Yes.

Q. Salvage property? A. Yes.

Q. Did he say anything about a list or wanting to see a listing or anything of that sort? A. No.

Q. How did you happen to do it. What suggestion did you surmise?

A. I guess just to show him what I had, that is all.

Q. And in pursuance to some conversations you had had theretofore in regards other purchased property was that in answer to something he talked to you about?

A. No, sir, he hadn't mentioned it at all. [193]

Q. Well, was it pursuant to his visit? I am trying to get at how it happened, what preceded it?

A. Nothing. He was just in my office and I just threw this file in front of him to see what he would do to see if he was interested in that stuff.

Q. Was that the first interview you had with him? A. No, this was the second day.

Q. This was the second day. Oh, after he made the offer to you? A. Yes.

The Court: Oh, I didn't understand it. All right, go ahead.

(Testimony of Lt. Harvey B. Apperson.)

Q. (By Mr. Leibowitz): Lieutenant Apperson, that was after the arrangement was made with Mr. Matthews? A. That is right.

Q. And that was pursuant to a plan that was the way you would start the thing off?

A. It wasn't any plan exactly. It was just an idea I had.

Q. That was the idea you had? A. Yes.

Q. Now, that list that you showed him that contained all these goods that really weren't for sale, were they?

A. They would have been available.

Q. But they weren't for sale then?

A. No, not that minute.

Q. You couldn't have sold them to him if you wanted to? [194]

A. I explained that to him that I could not.

Q. But nevertheless you threw the thing at him?

A. Yes.

Q. And the purpose was obviously to follow the plan you pre-conceived in arrangements with Mr. Matthews? A. I would say so, yes.

Mr. Leibowitz: All right, that is all.

The Court: Just a moment. You didn't throw it at him, did you?

A. No, sir, I put it on the desk actually. I more or less put it on the desk in front of him.

Q. And that was after he talked to you about purchasing property suggesting it?

(Testimony of Lt. Harvey B. Apperson.)

A. Yes, sir, this was the day after he suggested it.

The Court: All right, I understand.

Mr. Lamb: That is all.

The Court: That is all.

Mr. Lamb: You require that Lieutenant Apperson under the rule be excluded from the court room for the balance of the testimony?

The Court: Well, you might want to use him again. I think perhaps the rule should apply now until we are through.

Mr. Lamb: Just wait in the office.

Mr. Lamb: Private Walker. [195]

LA VAUGHAN WALKER

was called as a witness and having been first duly sworn, testified as follows:

Direct Examination

By Mr. Lamb:

Q. You were sworn? A. Yes, sir.

Q. State your name, please.

A. LaVaughan Walker.

Q. LaVaughan Walker? A. Right.

Q. And you are a corporal in the United States Air Force? A. That is correct.

Q. And in the fall of 1948 what rank did you hold in the United States Air Force?

A. Private First Class.

(Testimony of La Vaughan Walker.)

Q. Private First Class is sometimes designated as P.F.C.? A. Yes.

Q. And what duties had you been assigned or what branch or section had you been assigned at the Great Falls Air Force Base adjacent to the city of Great Falls?

A. Duty as typist and clerk in the salvage office.

Q. In the salvage office?

A. Great Falls Airbase, yes.

Q. And was that during the time that Lieutenant Apperson was the base salvage officer.

A. That is correct.

Mr. Leibowitz: At this point I object to referring to the base salvage office. I think whatever the proof is [196] along those lines.

Mr. Lamb: Well, he said he was.

Mr. Leibowitz: I think it shows he is in the base salvage office and no such office.

The Court: Let it stand and proceed with your examination.

Q. While you were employed as a typist and a file clerk in the salvage office at the Eastbase did you receive any telephone calls from the defendant, Meyer Schneider? A. Yes.

Q. Will you relate what conversation you had with the defendant on the first occasion?

Mr. Leibowitz: I don't think—I object to it. I don't think a proper foundation has been laid that the person who actually spoke to him was Meyer Schneider. And I don't think even if the man says

(Testimony of La Vaughan Walker.)

to him he is Meyer Schneider, it would make him Meyer Schneider. I think the rule is otherwise. I think you have to recognize the voice; I know it is. Somebody may be talking on his behalf.

The Court: Well, let's see what he says about it and see what develops.

Mr. Leibowitz: May I have an exception to your Honor's ruling?

The Court: Yes, certainly.

Q. Corporal Walker, did the party with whom you talked with on the first occasion over a phone call to the base [197] salvage office, did the party identify himself as to who he was?

Mr. Eickemeyer: If the Court please, I think we are entitled to know the time and circumstances and the place.

The Court: Well, very well.

Mr. Lamb: If you will just give me an opportunity, I will put it all in.

Mr. Leibowitz: I object to the term "identifying himself."

The Court: We will let that stand. Let's see what he says. How he explains it identifying himself. He will get to that pretty quick if you let him answer the question.

Mr. Lamb: Read the question.

(Question read.)

Q. Corporal Walker, did the party with whom you talked with on the first occasion over a phone

(Testimony of La Vaughan Walker.)

call to the base salvage office, did the party identify himself as to who he was? A. Yes.

A. Yes.

Q. Who did the party say that he was?

A. Meyer Schneider of New York City.

Q. And what did Meyer Schneider of New York City say to you?

Mr. Leibowitz: Just a moment. I object to all this.

Mr. Lamb: I will withdraw the question.

Mr. Leibowitz: May we have an exception. [198]

The Court: You may have an exception.

Q. On what date or approximately what date did you receive that telephone call at the base salvage office?

A. It was sometime in October. I am not sure of the date.

Q. Of the fall of 1948? A. That is correct.

Q. And where were you when you received the call?

A. At the base salvage office at the base.

Q. What did the party who said he was Meyer Schneider of New York City say to you?

A. He asked me what the materials consisted of or he wanted to know what kind of goods was in the stuff that he had purchased.

Q. Did he make any reference at all to any bid he had made or purchase that he had made at the Airbase?

Mr. Leibowitz: I object to it as leading.

(Testimony of La Vaughan Walker.)

The Court: Well, you can ask him whether or not he referred to it. It is leading.

Q. Just relate in detail what the conversation was, what he said to you?

A. He wanted to know what the material consisted of. And generally it is in cotton rags. It would be sheets, fatigues, work clothing. It would be anything the Army uses that is cotton would be in there. Anything in the wool rags would be O.D. jackets, pants and different kinds of clothing is what he had on his bid. I mean that is what he was awarded and that is what he bid on and that is what he got. [199]

Q. And did you advise him of those articles you have now enumerated? A. Yes.

Q. At the time of his first call?

A. That is correct.

Q. Was there any further conversation with him at that time? A. I don't believe so.

Q. At a subsequent time did you receive another telephone call from Meyer Schneider, the defendant here? A. I did.

Q. And about when was that?

A. That was a few days later. I am not sure of the time.

Q. That would still be in the month of October, 1948, as near as you can judge now?

A. Either October or the first part of November. I am not sure of that.

Q. And did the party who called you on the second occasion say who he was, who was speaking?

(Testimony of La Vaughan Walker.)

A. Yes.

Q. And what did he say?

A. He said he was Meyer Schneider.

Q. And what conversation and where were you when you received the second telephone call?

A. In the base salvage office.

Q. And what was the conversation which you had with the defendant, Meyer Schneider, on this second occasion?

A. He wanted to know if there was an overage in the [200] materials. Also he wanted to know if there was any socks in with the clothing he had bought. He wanted to know if I could separate the socks from the other materials. And I believe that is just about all.

Q. And what did you tell him?

A. I told him on the socks that I would see what I could do about it, and on the overage I said: "I am quite positive of it, quite sure there is an overage; there always has been and there probably is."

Q. And was there any further conversation with the defendant, Meyer Schneider, at that time?

A. Yes. The only thing after that related to the socks as I remember.

Mr. Leibowitz: I want to interrupt at this moment, your Honor. I think the entire conversation is immaterial, incompetent and irrelevant, and I don't think it has anything to do with the proof of the offenses charged on November 22nd and 23rd.

The Court: Well, it certainly is relevant. It re-

(Testimony of La Vaughan Walker.)

lates to his coming to Great Falls and what happened thereafter. He is inquiring about it and showing an interest in it. It is certainly relevant.

Mr. Leibowitz: Well, I will have my exception, of course?

The Court: Very well. [201]

Q. What was the further conversation you had with him?

The Court: It relates to this?

Mr. Lamb: Yes.

A. I remember him saying: "I am just an everyday guy; can you help me out?"

The Court: What is that? I didn't hear you.

A. Just an everyday guy, he was saying in the conversation.

The Court: He said he was an everyday guy?

A. That is correct.

Q. (By Mr. Lamb): And what was the rest of that sentence?

A. Could I help him out, and that was related to the socks deal, I believe, I am not positive.

Q. The defendant said he was just an ordinary guy and would you help him out?

Mr. Leibowitz: He said something more than that; he said something about relating to socks.

Q. And you believe that conversation related to the removing of the socks from the shipment?

Mr. Leibowitz: Wait a minute. He didn't say that related to the socks to removing the socks from the shipment; to separate the socks, isn't that so?

(Testimony of La Vaughan Walker.)

A. That is the same difference; if you remove them you separate them.

Mr. Lamb: You may cross-examine him. [202]

Q. (By Mr. Lamb): Was there anyone present in the office besides yourself at the time of either of these telephone calls you received from Meyer Schneider, the defendant?

A. None of the two.

Q. There was not? A. No.

Q. At a subsequent time did you receive a third telephone call from the defendant, Meyer Schneider? A. A few days later, yes.

Q. And will you relate what the circumstances of that was and who else was present and so forth?

A. Well, there was not very much on that phone call. I didn't—

Mr. Eickemeyer: I wonder if we could have a time, if the Court please. We haven't any reference to these dates.

Q. About when was the third telephone call, Corporal?

A. I would say as close as I can put it would be about the 8th or 9th of November.

Q. Of 1948? A. That is correct?

Q. And who else was present, if anyone, when the third call came to you?

A. Lieutenant Apperson was present and talked to the defendant on that call, and also Sergeant Aulgur was there.

Q. And what conversation did you have with Meyer [203] Schneider on that particular date?

(Testimony of La Vaughan Walker.)

A. None that I can particularly remember. I think he related the same, he was coming out, something like that. That was all I understood on that.

Q. Who answered the telephone?

A. Lieutenant Apperson answered that call and called for me. I was on the outside going out to get in the jeep. He called for me and I came back and answered the phone. And he says: "Meyer Schneider from New York." So I talked, I think I told him who I was, and then Lieutenant Apperson says he wants to talk to him, so I told Meyer Schneider I would let him speak to the base salvage officer.

Q. Yes, and that was the end of your conversation with him at that time?

A. Yes. I stayed in there for a few minutes and left and went on down to the warehouse.

Q. And were you in and around the salvage office during the period November 22nd and 23rd, 1948, when the defendant, Meyer Schneider, came out to pick up his purchase?

A. No, sir.

Mr. Lamb: You may cross-examine. [204]

Cross-Examination

By Mr. Leibowitz:

Q. Corporal Walker, when you say the person whom you said it was Meyer Schneider asked you to separate or remove the socks from the other stuff, that was a matter of convenience for him, wasn't it?

A. That is correct.

(Testimony of La Vaughan Walker.)

Q. He didn't want you to take the socks out of the stuff he had bought?

A. He wanted me to get the socks out of the stuff he bought.

Q. He said that?

A. That is right. He wanted me to see if I could do that.

Q. And take that stuff and do what, throw it away?

A. I guess so, or hold it back to another sale.

Q. Well, don't you know, Mr. Corporal Walker, that socks is a different commodity altogether and it might be easier in separating the goods to keep the socks apart?

A. Socks are made of wool or cotton material and that is all we are interested in. If we had a bag over here for wool and a wool sock come in naturally we put the wool sock into the wool bag; if cotton we put them in a cotton bag. And when we sold cotton and wool rags we sold cotton and wool rags. [205]

Q. And don't mix the socks with other stuff, keep the socks separate?

A. No, he says: "Are there any socks in the material?" I says: "Yes, there's socks in there." He asked me: "Can you see if you can take the socks out of the material?" He didn't say what to do with them, or put them separate. What he wanted us to do I think was hold them back for another sale.

Q. He didn't say that, did he?

A. No, he didn't say what to do with them.

(Testimony of La Vaughan Walker.)

Q. All he asked you was to separate them?

A. Yes.

Mr. Leibowitz: That is all.

Mr. Lamb: That is all.

Mr. Leibowitz: I want to ask him a few more questions:

Q. (By Mr. Leibowitz): Prior to the first call you have never spoken to anyone by the name of Meyer Schneider as far as you know? A. No.

Q. So that you weren't familiar with his voice?

A. No.

Q. So the mere fact that he told you he was Meyer Schneider didn't convince you that he was Meyer Schneider?

Mr. Lamb: That is calling for a conclusion and it is objected to.

The Court: Yes. [206]

Mr. Leibowitz: All right. That is all. Of course I have an exception to all that testimony, your Honor?

The Court: Oh, yes.

Mr. Lamb: Sergeant Aulgur.

SGT. RAYMOND P. AULGUR

was called as a witness, and having been previously sworn, testified as follows:

Direct Examination

By Mr. Lam:

Q. You were sworn? A. Yes.

(Testimony of Sgt. Raymond P. Aulgur.)

Q. Your name is Raymond P. Aulgur?

A. Yes, sir.

Q. And you are a Staff Sergeant in the United States Air Force, is that correct? A. Yes.

Q. And in the fall of 1948, did you have the same rank as you now hold? A. Yes, sir.

Q. And were you assigned at that time to the Great Falls Airbase adjacent to the city of Great Falls, Montana? A. Yes, sir.

Q. And as a non-commissioned officer at the Great Falls Airbase to what section or branch had you been assigned for your duties?

A. I was assigned to base salvage office, N.C.O. in charge. [207]

Q. Base salvage office?

A. Base salvage office.

Q. And you were the non-commissioned officer in charge? A. Yes, sir.

Q. And who was the commissioned officer in charge of the base salvage office.

A. Lieutenant Apperson.

Q. And that is Lieutenant Harvey B. Apperson?

A. That is right.

Q. And on November 22, 1948, will you relate what you did as far as the defendant, Meyer Schneider, is concerned?

Mr. Leibowitz: What date was that?

Mr. Lamb: November 22, 1948.

A. Some time around nine o'clock in the morn-

(Testimony of Sgt. Raymond P. Aulgur.)

ing the guard called from the gate and said there was a Mr. Schneider at the gate.

The Court: Speak louder so they can all hear.

A. Approximately ten o'clock the guard called from the main gate and said there was a Mr. Schneider to see the salvage officer. I proceeded to the gate in a jeep, picked Mr. Schneider up and took him back to the office.

Q. Was that pursuant to some instructions given you prior to that time?

A. Lieutenant Apperson told me Mr. Schneider would be in sometime around ten o'clock and that I was to pick him up. [208]

Q. And when you and the defendant, Meyer Schneider, arrived at the base salvage office, what was the, was there any salvage property in the office itself and the warehouse immediately to the rear thereof?

A. There was quite a large amount of surplus clothing laid out on the floor in open piles. It was not covered.

Q. And when you and the defendant, Meyer Schneider, arrived at the office and walked in, were those piles of surplus clothing in the immediate vicinity and within sight of the defendant, Meyer Schneider?

A. Part of them were, yes.

Q. At that time shortly after ten o'clock on November 22, 1948, did you have a conversation with the defendant, Meyer Schneider?

A. Yes, sir.

(Testimony of Sgt. Raymond P. Aulgur.)

Q. Was there anyone else present at the time of that conversation?

A. Just for a couple of minutes.

Q. Who was that?

A. Sergeant Christianson.

Q. Will you relate what part of the conversation took place in the presence of Sergeant Christianson?

A. As I remember about the only thing that was said was about the cold weather.

Q. All right, and then did Sergeant Christianson leave the office? A. Yes, sir.

Q. And that left you and Meyer Schneider alone in the base salvage office? A. Yes, sir. [209]

Q. Did you have a further conversation with the defendant, Meyer Schneider, after Sergeant Christianson left? A. Yes, sir.

Q. Will you relate what that conversation was?

Mr. Leibowitz: I object to that conversation. I think it is irrelevant and immaterial and incompetent; it's not within the issues here.

The Court: I don't know. You don't know and I don't know what it is about.

Mr. Leibowitz: Of course, we know what is in the indictment. I don't think it has anything to do with the indictment.

The Court: Well, let's see whether it does or not. I am not going to shut him off.

Mr. Leibowitz: I think it would be highly prejudicial. I will have my exception, your Honor.

(Testimony of Sgt. Raymond P. Aulgur.)

The Court: Take your exception.

The Court: What was the conversation about?
What did it relate to?

A. Mr. Schneider referred to the property laying on the floor and asking if some kind of a deal couldn't be made. I informed him the property had been listed for sale and would be published in the very near future and if he cared to, he could look the property over and I would give him a form showing the property so he could submit a bid. [210] And as I started to go after the form he made the remark that he thought I misunderstood him; he meant just a deal between the two of us. I further informed him that the property was up for sale and that nothing could be done; if he wanted to bid on it, that he could. And then I handed him a copy of the list we had made up to submit the property for sale. While I was giving him the list there was some remark made about a lot of money could be made, and approximately that time Lieutenant Apperson came in.

Q. And was that the end of your conversation with the defendant at that time? A. Yes, sir.

Q. All right, then after Lieutenant Apperson came in the office what took place within your hearing and sight?

A. I introduced Mr. Schneider to the Lieutenant and they left almost immediately to go to the salvage yard as far as I knew to inspect the property that Mr. Schneider had purchased on the contract.

(Testimony of Sgt. Raymond P. Aulgur.)

Q. Then at some time later did you have some association with the defendant, Meyer Schneider, or further conversation?

A. The following afternoon was the first time I saw him after that.

Q. And that would be November 23, 1948?

A. Yes, sir.

Q. All right, will you relate what transpired when you saw him the afternoon of November 23, 1948?

A. Well, Lieutenant Apperson had instructed me to get a [211] truck from the motor pool as there was material to load in the box car. And we went directly to building 1045 where there was surplus property stored. And Mr. Schneider pointed out the boxes he wanted loaded and as he pointed them out I put them on the two-wheeler and wheeled them out to the truck. And the only thing he said to me other than pointing out the boxes and saying "This one," was something in regard to the fact I handled a two-wheeler before.

Q. What arrangements, if any, were made with you for the payment for your services in loading materials upon the truck and subsequent disposition of them?

A. Lieutenant Apperson asked me if I cared to help load the property and that Mr. Schneider would pay us for it. There was no amount of money specified. We would be paid for loading and he asked me

(Testimony of Sgt. Raymond P. Aulgur.)

if I would get the rest of the boys in the salvage yard to help load it if they wanted to.

Q. And how many did you secure to help, do you recall?

A. I believe there were three men from the salvage yard and the truck driver, besides myself.

Q. And what else, if anything, did the defendant, Meyer Schneider, do in addition to pointing out the particular boxes you should load, if you recall?

A. Well, as the boxes were removed he had a piece of paper in his hand and was writing something down and I presume he was writing down what was in the boxes. [212]

Q. Did the boxes contain some description of number or contents?

A. Outside of every box it was either marked with black pencil or there was a small card attached to it listing—most of the boxes had the size of each article in the box and the amount.

Q. And after you loaded the first load at the direction of the defendant, Meyer Schneider, where did you take the truck and its load of merchandise?

A. We got in the truck and went to the warehouse on the base where the box car was spotted on a siding.

Q. And what instructions, if any, were given you as to the manner of loading the car?

A. The only thing that I had been told about was to load the merchandise in the boxes first.

Q. And who gave you those instructions?

(Testimony of Sgt. Raymond P. Aulgur.)

A. Lieutenant Apperson.

Q. And after, while unloading the first load of boxes and materials into the freight car, where was the defendant, Meyer Schneider, if you know?

A. Standing right outside the car.

Q. And after you unloaded the first truck load then what did you do?

A. We proceeded back to building 1045 to get the second load. [213]

Q. And what did the defendant do, if you know?

A. Mr. Schneider and Lieutenant Apperson got back in Lieutenant Apperson's car and went back to building 1045 also.

Q. And after you had arrived at building 1045 what, if anything, did the defendant do?

A. He came back in the building and started pointing out the boxes again he wanted.

Q. Was this same procedure followed then generally during the loading of the various loads from the warehouse?

A. Yes.

Q. And how many loads of boxes and materials were taken from building 1045 at the direction of the defendant, Mr. Schneider?

A. Somewhere around five truck loads.

Q. And after the removal of the five truck loads of boxes and materials what, if anything, was left in the warehouse 1045?

A. There was some McClellan saddles, a few aircraft instruments, and some airplane tires and some automobile tires.

(Testimony of Sgt. Raymond P. Aulgur.)

Q. Were there any further surplus clothing materials left in the building?

A. Not to my knowledge.

Q. And did you haul all of the loads of surplus materials at the direction of Meyer Schneider to the freight car that you have referred to?

A. Yes, sir.

Q. And all of those articles were loaded into the freight car? A. Yes, sir. [214]

Q. And after emptying building 1045 then what did you do?

A. After the last truck load was put on the box car we went from the box car to the salvage yard and started loading the rags.

Q. And by the rags do you know whether or not those were the rags that the defendant, Meyer Schneider, had purchased by bid and contract?

A. Yes, sir.

Q. Those were the articles? A. Yes.

Q. And what did you do with those wool and cotton rags?

A. We loaded them on top of the boxes in the box car.

Q. And about what time did you complete the loading of the cotton and wool rags?

A. Somewhere around ten-thirty or eleven o'clock.

Q. That night? A. Yes, sir.

Q. And about when did you start loading the car? A. Around 3:30 in the afternoon.

(Testimony of Sgt. Raymond P. Aulgur.)

Q. And did you receive any compensation, you and the other helpers for the loading of the car?

A. Mr. Schneider paid the other four boys \$10.00 apiece and myself \$15.00, because I was the overseer as he said.

Q. And about when was that payment made?

A. I don't remember just exactly when that was. It was before we had completed the loading of all the rags.

Q. And did Lieutenant Apperson and the defendant, Meyer [215] Schneider, stay with you during all of the time that you were loading the cotton and wool rags? A. No, sir.

Q. Do you recall about when they left?

A. I believe it was right after the first truck load.

Q. Of rags? A. Of rags, yes, sir.

Q. Have you any idea about what time it was then? A. No, I don't. It was dark.

Q. And did you have any further conversation with the defendant, Meyer Schneider, other than what you have related?

A. Not after he paid us for loading the property.

Q. And you have related, as far as you can and as far as you remember, all of the conversations which you had with him? A. Yes.

Mr. Lamb: You may cross-examine.

(Testimony of Sgt. Raymond P. Aulgur.)

Cross-Examination

By Mr. Leibowitz:

Q. Sergeant Aulgur, were you told by Lieutenant Apperson about this plan of trapping Mr. Schneider?

A. Lieutenant Apperson called me on the telephone and told me no matter what he did to keep my mouth shut and keep my eyes open. That is all the conversation.

Q. You didn't ask him any questions?

A. No.

Q. And that was on when, November 23rd? [216]

A. I believe it was, yes, sir.

Q. Now, you stated that you were directed to go to the motor pool and pick up the car, is that so?

A. To get a truck, yes, sir.

Q. Can you command a truck at any time you want to?

A. We call the motor pool and request a truck be assigned to our department at any time we need it.

Q. You don't have to give them any reasons for it, do you?

A. No, other than the fact we have some property to move.

Q. Beg your pardon?

A. Other than the fact we have something to move from one place to another.

Q. That is true, but do you have to say to them, we have to deliver, we have certain supplies to go out and we have to make a shipment?

(Testimony of Sgt. Raymond P. Aulgur.)

A. Not necessarily, no.

Q. You don't have to? A. No.

Q. Do you have the keys to warehouse No. 1045?

A. Yes, sir.

Q. Ordinarily that place is locked, isn't it?

A. Kept locked all the time.

Q. All the time—the only time you can get into it is when they call upon you? Are you the only person who may have the keys? [217]

A. Lieutenant Apperson had a key at that time. There were two keys to the lock.

Q. And you had the other key?

A. Correct.

Q. In warehouse 1045 did you have any stuff that was to be reissued to the Army?

A. No, sir.

Q. That store house 1045 is a store house that's been set aside for salvage clothing?

A. It was a building that had been assigned to us to stock this surplus property in because we didn't have room to put it down in the salvage yard.

Q. And sometimes it can be used for some other purpose?

A. No, sir. It was used for surplus property only.

Q. Now, you say you started to load the stuff sometime about three-thirty, three o'clock?

A. Yes.

Q. And you knew that you were going to work after hours, isn't that so? A. Yes, sir.

(Testimony of Sgt. Raymond P. Aulgur.)

Q. And were you assigned by Lieutenant Apperson to get up a gang—were you asked to get a gang?

A. To load the truck, yes, sir.

Q. Were you told that these people would have to work after hours? A. Yes, sir.

Q. And you told that to the group of soldiers?

A. The agreement was that we would work until it was loaded.

Q. Now, from your experience and from your knowledge, have [218] you ever loaded a car for salvage or salvage materials? A. No, sir.

Q. Wait a minute. After three-thirty?

A. No, sir.

Q. How long have you been attached to the salvage department?

A. Since the 22nd of September, 1948.

Q. You got there a little after Lieutenant Apperson did? A. Yes, sir.

Q. And are you still attached to that depot?

A. Yes, sir.

Q. And that answer that includes up to the present day? A. Yes, sir.

Q. You didn't ask Lieutenant Apperson then the necessity for loading after hours, did you?

A. Well, I didn't think it was necessary as long as I was going to be paid for it, I didn't mind it.

Q. You were only interested in the pay; you didn't care? A. That is right.

Q. And the same thing holds true for the other men as far as you know? A. Yes, sir.

(Testimony of Sgt. Raymond P. Aulgur.)

Q. Now, do you know that or not, do you know or not whether Mr. Schneider had paid for any of the merchandise?

A. No, sir, I didn't, other than what he purchased on the contract.

Q. You knew that, did you? A. Yes, sir.

Q. And how did you know that? [219]

A. That has to be paid for before we have authority to release the property to the successful bidder.

Q. And the only time you can release the property to the successful bidder is after he has made payment for it?

A. To the contracting officer, yes, sir.

Q. If Mr. Schneider came up to you and said to you: "Load the car of rags." Would you, which he legitimately purchased, without showing you that he paid for it; would you do it?

A. No, sir, I wouldn't.

Q. Would you take his word for it that he paid for it? A. No, sir.

Q. Well, what would you require of a purchaser to do before you would start loading the merchandise?

A. Either he would have a slip from the contracting officer stating the fact that he had paid the balance or a call from the contracting officer stating that he had paid it.

Q. In other words, the release of the merchandise would have to come from the contracting officer? A. Yes, sir.

(Testimony of Sgt. Raymond P. Aulgur.)

Q. Is he the only man who has the authority to release the merchandise after it has been paid?

A. Yes, sir.

Q. And the contracting officer wasn't Lieutenant Apperson, was it? A. No, sir.

Q. Lieutenant Greene, is it? A. Yes, sir.

Q. Did you get a call from Lieutenant Greene that it was paid?

A. As far as I know, Lieutenant Apperson received the [220] notification, if I am not mistaken. He went to the contracting office with Mr. Schneider to make the payment.

Q. You didn't go along, did you?

A. No, sir.

Q. Did Lieutenant Apperson then tell you that Mr. Schneider had paid for the merchandise?

A. No, sir.

Q. Well, you stated you knew Mr. Schneider had paid for it; how did you get that information?

A. The Lieutenant wouldn't have said to load the property unless it had been paid for.

Q. That is, you assumed that? A. Yes, sir.

Q. And you also assumed that Mr. Schneider had paid for the stuff that came out of 1045?

A. Yes, sir.

Q. Did you know that the stuff coming out of 1045 could not be sold on "spot"——

A. On a spot sale?

Q. Yes. A. Yes, sir.

Q. You knew that, didn't you?

(Testimony of Sgt. Raymond P. Aulgur.)

A. Yes, sir.

Q. Did you also know that the stuff out of 1045 had not been sold to anybody? A. Yes, sir.

Q. You knew that but nevertheless you took the merchandise out pursuant to—I am not quibbling about that—but you took the stuff out pursuant to an order that was directed to you?

A. Yes, sir.

Q. And you followed that order?

A. Right.

Mr. Leibowitz: That is all. [221]

Redirect Examination

By Mr. Lamb:

Q. Sergeant, you were asked the question whether the only person who could release the property would have been the purchasing and contracting officer, and were asked in addition to that if that was Lieutenant Greene and not Lieutenant Apperson. You recall that? A. Yes.

Q. If a release had been secured by payment to the purchasing and contracting officer, in whose possession would the salvage property or scrap be at that time?

A. It would be in the possession of the salvage officer or in the warehouse.

Q. Well, then would the purchaser, if he had paid the purchasing and contracting officer, need a release from someone further in order to secure the physical possession of the property which he had purchased?

(Testimony of Sgt. Raymond P. Aulgur.)

A. There is a form we use in order for them to remove the property from the base as we give them the property.

Q. Would they need any release from you, or release from Lieutenant Apperson as the base salvage officer?

A. From the salvage officer if they were taking it off in a truck. In a box car the car is assumed on the base as far as I know and there is no release required to have the car removed from the base. [222]

Q. How would they get the materials out of the place where it might be stored? Would they have to secure permission—who would they have to secure permission from eventually; is it the purchasing and contracting officer?

A. It would have to come directly through the salvage office.

Q. And they wouldn't need a release from either you or Lieutenant Apperson at that time?

A. No, sir.

Q. They wouldn't? A. No, sir.

Q. How would they get it out of your possession?

A. Well, in that way of speaking, yes, they would have to have our permission to take it, and it would be loaded while one of us, one of the salvage personnel, watched the removal of the property.

Q. Were the services which you performed that day in securing some help and the removal of the property and the loading of the car part of your duties or did you perform them voluntarily?

(Testimony of Sgt. Raymond P. Aulgur.)

A. It was voluntary.

Q. And you were later paid for those voluntary services by the defendant, Meyer Schneider?

A. That is right.

Mr. Lamb: That is all. [223]

Recross-Examination

By Mr. Leibowitz:

Q. Sergeant, now where the loading took place is known at the Airbase as a restricted area, isn't that so? That is, after certain hours you can't——?

A. Yes, sir.

Q. And before you could do any work in that place you had to secure some order of some sort permitting you to do that type work there?

A. Yes, sir.

Q. And did you obtain that order?

A. Yes, sir.

Q. Personally?

A. Lieutenant Apperson obtained the permission to be in the area loading after the hour.

Q. And where did that order come from?

A. It came from the guard house and the Provost Marshal's Office.

Q. That, of course, is not Colonel Chennault's office at all? A. No, sir.

Q. It is a different unit altogether?

A. Yes, sir.

Mr. Leibowitz: That is all.

(Testimony of Sgt. Raymond P. Aulgur.)

Redirect Examination

By Mr. Lamb: [224]

Q. As a matter of fact, the Provost Marshal and Guard House at that particular moment were under the command of Colonel Chennault, were they not?

A. Yes.

Mr. Lamb: That is all.

Q. (By Mr. Leibowitz): They were not under the control of the base salvage officer, were they?

A. No, sir.

Mr. Leibowitz: That is all.

Mr. Lamb: Lieutenant Fenton. The Lieutenant was not sworn.

LT. ALBERT J. FENTON

having been first duly sworn, testified as follows:

Direct Examination

By Mr. Lamb:

Q. State your name, please.

A. Albert J. Fenton.

Q. And you are a First Lieutenant in the United States Air Force? A. That is correct.

Q. And are you stationed at the Airbase immediately adjacent to the city of Great Falls, Montana? A. Yes.

Q. And what official duties did you have at the Great Falls Airbase? A. Base Signal Officer.

Q. And as Base Signal Officer do you have supervision and charge of the Government records

(Testimony of Lt. Albert J. Fenton.)

pertaining to telephone calls and the things of that nature? A. That is true. [225]

Q. Lieutenant, I show you WD AGO Form 11-1-39, which has been marked Plaintiff's Exhibit No. 11, and ask you if that exhibit was part of your official records at the Great Falls Airbase over which you have immediate charge and supervision?

A. To the best of my knowledge, yes.

Q. And as a matter of practice does your office maintain the records of long distance phone calls that are made collect as to the person that makes the call and so forth? A. That is true.

Q. And does that record which you now have in your hand become a part of your permanent records at the Great Falls Airbase?

Mr. Eickemeyer: If the Court please, I think he said to the best of his recollection.

The Court: To the best of his knowledge.

Mr. Eickemeyer: Knowledge, yes.

Mr. Lamb: At this time we reoffer Plaintiff's Exhibit No. 11, which is offered at your request.

Mr. Eickemeyer: It is objected to.

Mr. Leibowitz: Before it is offered I would like to ask some questions concerning it.

The Court: Go ahead, cross-examine him.

Q. (By Mr. Leibowitz): What is your name?

A. Fenton, sir.

Q. Fenton? A. Yes, sir [226]

Q. Lieutenant, how many telephones are there at the Airbase? A. Approximately 473.

(Testimony of Lt. Albert J. Fenton.)

Q. Does each telephone bear a different number as far as you know?

A. Well, sir, there's approximately three main lines and approximately 173 extensions; the three main lines all have different numbers.

Q. And do you take charge of each and every one?

A. Yes, sir, I do.

Q. I beg your pardon?

A. I do.

Q. Of course, you don't know anything about the individual calls that come through, do you?

A. We have a complete record of every call that leaves the base that is toll charged, either collect in or out.

Q. Collect to whom?

A. To anyone.

Q. You mean a call being made from your place to someone else to be charged to that other person, or do you mean a call from some other person to your place collect to you?

A. Regardless of the type call if it is long distance call in or out collect, a complete record is maintained by our office.

Q. Is this your handwriting, Lieutenant Fenton?

A. No, sir, it isn't.

Q. Do you recognize the handwriting on it?

A. No, sir, I don't. [227]

Q. Did you bring it to court?

A. No, sir, I didn't.

Q. You don't know where it came from?

A. It came out of my records.

Q. How do you know?

(Testimony of Lt. Albert J. Fenton.)

A. It was gotten out of the records which we withdrew from the files by an O.S.I. man in the presence of my accounts clerk who is a buck sergeant.

Q. Were you present then? A. I was not.

Q. Then, of course, you don't know?

A. That is right, sir.

Q. You presume that procedure was followed?

A. Yes, sir.

Q. Now, Lieutenant Fenton, do you know the number of Great Falls 9795?

A. No, sir, I do not.

Q. Do the numbers at your place bear the exchange Great Falls? A. Sir?

Q. Do the numbers bear the exchange Great Falls? In other words, do you have to say "Great Falls," so and so number?

A. No, sir, we can dial 9 and leave the base and dial the numbers.

Q. Let me put it this way. I want to call the Airbase. Do I have to call the Airbase and give the number?

A. Yes, sir, you would have to dial 7651 if you expect to get the operator. [228]

Q. What I mean is this. If I am in New York City and want to make a phone call to the Airbase and I happen to know a number there——

A. On the base, yes.

Q. Would I have to start over by saying "Great Falls" and then give that number in order to get

(Testimony of Lt. Albert J. Fenton.)

the Airbase, or would I just give the operator the number and get the Airbase?

A. You would have to say that number if you were trying to call the base from town here. It is one of our trunk lines.

The Court: He hasn't answered the question.

Q. I am trying to get it from New York City. I know—let me have one of your numbers.

A. 361 is my own number.

Q. 36—— A. 361 is my own extension.

Q. Now, if I called from New York City and said I wanted to get the Airbase at Great Falls——

A. It is a call from New York City?

Q. Yes. And I say to her “number 361,” will I get the number that way?

A. Yes, the operator does, downtown does connect you.

Q. Or do you think I would have to say to the operator “New York City—I want Great Falls 361”?

A. You would not get it Great Falls 361.

Q. In other words, that Great Falls number would not be [229] an Airbase number?

A. Would you repeat that question?

Q. I say, in other words, where we say “Great Falls” it would be necessary to use the Great Falls as an exchange plus a number it wouldn't be anywhere than the base?

A. That is true. We don't have the same num-

(Testimony of Lt. Albert J. Fenton.)

bers in town we have at the base. We have three digit numbers on the base.

Q. I believe I asked you whether you were familiar with the telephone number 9795? You don't know that? A. No, sir, I don't.

Mr. Leibowitz: That is all. Wait a minute. I am sorry.

Q. We have a telephone number here, Lieutenant Fenton, 7651? A. Yes.

Q. Now that is one of your numbers?

A. That is one of our trunk numbers.

Q. Trunk numbers?

A. Yes, that is the trunk line between the exchange in town and the telephone exchange at the base. That is our trunk line.

Q. Is there any way of verifying through your department whether Lieutenant Apperson had actually made a call to New York City collect from the telephone number 7651?

A. That is the only record with the exception of charges that are put out by the telephone company which would not name [230] any individual. It is retained by the operator.

Q. But as long as you have this here, Lieutenant Fenton, it is not a charge any more?

A. What do you mean it is not a charge?

Q. In other words, that would be a record in your place? A. That is right.

Q. Can you tell us from this slip here the name of the operator who handled that call?

(Testimony of Lt. Albert J. Fenton.)

A. Just that it is operator 11 at the time, and operator 11 would be one of the girl operators at the base.

Q. Do you happen to know who she is?

A. I couldn't say right now. I can find out. I couldn't say right now.

Q. Would you find out? A. I could, sir.

Q. Would she have a separate book?

Q. No.

Q. That is the only record she would have?

A. That is right, sir. She probably couldn't definitely state that that was the true record because they handle so many calls, but that would actually show a call that was made.

Q. Well what does that mean right here "toll okay, l.t." by "toll okay"?

A. Well it is collect and she got an okay on it.

Q. You mean before she put the call through she had an okay from the person receiving the call they would accept it? A. That is right. [231]

Q. Is that so it may not mean something else?

A. No, not that I know of.

Q. It won't mean that okay the party is——

A. It means the toll is okay and it is accepted.

Q. Do you have the same type slip for every call or do you have different colors?

A. Every one is on the same form and same color.

Q. What is the serial number J-78?

A. That is the priority actually of a control office. J, control office, and 78 is the number of the

(Testimony of Lt. Albert J. Fenton.)

call. And we maintain records on J-78 as to who made the call and who authorized the call; in case of a collect call of the Government the Government would pay for the call.

Q. It is possible Lieutenant Fenton, that that call was made by Lieutenant Apperson to New York City and was paid by you people even though it is collect here?

A. I will have to check my records.

Q. Will you do that? A. I could.

Q. Will you have the information for us?

A. At what time.

Q. Say tomorrow?

A. I could check my records and give you the information I have available because those took place prior to my time on the base.

The Court: You haven't given him a memorandum of [232] those two things you asked him about so there won't be a mistake about it when he comes in?

Mr. Leibowitz: Suppose we give you a copy of the slips and you check them and verify them.

A. Yes, sir, I will get any information you require.

Mr. Leibowitz: All right.

Mr. Lamb: I have offered Exhibit 11 in evidence.

The Court: What is that?

Mr. Lamb: I have offered Plaintiff's Exhibit No. 11 in evidence.

(Testimony of Lt. Albert J. Fenton.)

The Court: Well I think it is sufficiently identified.

Mr. Leibowitz: I think we ought to wait until we get the information.

The Court: All right, we will wait until tomorrow morning. But don't forget to offer it. It is easy enough to do that.

Mr. Lamb: Lieutenant, will it be possible for you to be here ten o'clock in the morning with that information?

Mr. Leibowitz: Yes.

Mr. Lamb: You were going to furnish him with a copy; are you going to do that?

Mr. Leibowitz: Yes.

Mr. Lamb: I wonder if I might have a ten minute recess? [233]

The Court: We will take a fifteen minute recess.

(2:40 p.m.)

(Court resumed, pursuant to recess, at 2:55 p.m. at which time the jury, defendant, and all counsel were present.)

The Court: Call your next witness.

Mr. Lamb: Mr. Matthews.

JOHN J. MATTHEWS

was called as a witness, having been previously sworn, and testified as follows:

Direct Examination

By Mr. Lamb:

Q. State your name, please.

A. John J. Matthews.

Q. And what official position if any do you occupy with the United States Government?

A. I am a Special Agent of the Federal Bureau of Investigation.

Q. And how long have you been so employed?

A. Approximately ten and one-half years.

Q. And where are you now stationed?

A. I am now assigned to the Chicago Division.

Q. And prior to the assignment in the Chicago Division where were you assigned? [234]

A. I was assigned to the Butte Division.

Q. And in the fall of 1948 were you so assigned to duty at Great Falls, Montana? A. I was.

Q. Mr. Matthews, you heard the testimony of Lieutenant Apperson here yesterday and today?

A. Yes, sir.

Q. Will you relate your first contact with Lieutenant Apperson with reference to the transactions concerning which he has testified?

Mr. Leibowitz: I object to that as irrelevant and immaterial and incompetent and not in the presence of the defendant and not binding upon the defend-

(Testimony of John J. Matthews.)

ant at all what he might have arranged or said with Mr. Apperson.

The Court: I think so. You will have to get at it in some other way.

Q. When and where did you first meet Lieutenant Apperson?

A. I first met Lieutenant Apperson at about two p.m. on the afternoon, two p.m. November 22nd, 1948.

Mr. Leibowitz: That is all.

Q. Where?

A. In my office in the Federal Building at Great Falls, Montana.

Q. And whom if anyone was he in company with?

A. He was accompanied by Captain John Brynildson, the Director of the 15th District of the Office of Special Investigations at the Great Falls Air Force Base. [235]

Q. And after meeting Lieutenant Apperson in company with Captain John Brynildson when did you next see Lieutenant Apperson?

A. On the morning of November 23rd, 1948.

Q. And where?

A. At the Great Falls Air Force Base.

Q. And whom if anyone was in company with him at that time?

A. I first met him in the O.S.I. or the Office of Special Investigations office at the Air Force Base

(Testimony of John J. Matthews.)

where I spoke with him in the presence of Captain Brynildson, and I believe other O.S.I. agents?

Q. And after meeting Lieutenant Apperson and Captain John Brynildson on the morning of November 23, 1948, what did you do?

A. I went with Lieutenant Apperson to the office of Colonel John Chennault, who was the Base Commanding Officer of the Great Falls Air Force Base.

Q. And whom if anyone was there in addition to Colonel Chennault, yourself and Lieutenant Harvey B. Apperson? A. A Colonel Abdalah.

Q. And what official position if any did he occupy at that time at the Great Falls Airbase?

A. It was my understanding he was the Base legal officer.

Q. Lieutenant Apperson was asked upon cross-examination [236] concerning instructions which you may have conveyed to him. Will you relate at this time what took place in Colonel Chennault's office and the instructions which you gave to Lieutenant Apperson?

Mr. Leibowitz: I am going to object to that; it hasn't taken place in the presence of the defendant. Of course what was discussed among them can't be binding.

Mr. Lamb: It was all in evidence.

Mr. Leibowitz: I may have done that on cross-examination of Apperson but it does not leave it open as far as Mr. Matthews.

Mr. Lamb: It is in corroboration of statements

(Testimony of John J. Matthews.)

which Lieutenant Apperson gave to Mr. Leibowitz, which was produced by him in his cross-examination of Lieutenant Apperson.

The Court: I think so. I will overrule the objection. Go ahead.

Q. Will you relate the conversation that took place at that time and the instructions which you gave Lieutenant Harvey Apperson?

A. I instructed Lieutenant Apperson and discussed it in the presence of Colonel Abdalah and Colonel Chennault. I informed him specifically that under no circumstances was he to say anything to Mr. Schneider to originate any possible bribery, and further that he was to do nothing whatever other [237] than to follow any suggestion that Mr. Schneider may wish to make, and further that he was not to ask for any amount of money or to do any bargaining with regard to the amount of money but to accept only what Mr. Schneider was to offer to him in the event he was to make such an offer.

Mr. Leibowitz: Now, your Honor, I move to strike his answer on the ground it is very prejudicial to the defendant. It does not prove that Mr. Apperson may not have followed his instructions or did follow his instructions.

The Court: It seems to me that since you have developed that feature of the case and gone into it as thoroughly as you have by using the name of Mr. Matthews and Lieutenant Apperson and what was said and what was done and what instructions

(Testimony of John J. Matthews.)

and brought the subject into the case in that way that Mr. Matthews would certainly have an opportunity to say what he did say to Apperson.

Mr. Leibowitz: But that doesn't prove, your Honor,—well, I don't want to argue the point. All right, I will take my exception.

The Court: The defendant hasn't got anything to do with this and you brought it out outside of it but of course it is relevant to the case.

Mr. Leibowitz: There may be relevancy of the part of the testimony that Mr. Apperson did not initiate anything because he followed the instructions but that may not be true. [238]

The Court: He has already testified what Mr. Matthews said to him; you brought that all out into the case.

Mr. Leibowitz: That may be all right.

The Court: Now we will find out what Mr. Matthews told him; there may be some conversation there to your advantage.

Mr. Leibowitz: Well I am not looking to advantage through Mr. Matthews and I may take exception to that. I will take my exception.

The Court: All right, you may take your exception and let it stand what he told Lieutenant Apperson; all this conversation was brought up by counsel himself.

Q. (By Mr. Lamb): Was there any further instructions given to him or advice?

A. The conversation with Apperson occupied a

(Testimony of John J. Matthews.)

period of some time, and further reference was made to those particular points as our plans progressed.

Q. Did you or did you not advise him of your consultation with me and the instructions which I had given to you to relate to Lieutenant Apperson?

Mr. Leibowitz: I object to it as a leading question.

The Court: All right, preface it by whether or not.

Mr. Eickemeyer: If the court please, may this all go in under that same objection? [239]

The Court: Oh, sure.

Q. Did you or did you not convey any instructions from me? A. I did, sir.

Q. And are those included in the statement which you have just given?

A. That is correct, sir, they were.

Q. In addition to the instructions with reference to any conduct on behalf of Lieutenant Apperson what arrangements if any did you make with him for his conduct in the event a payment was made to him by the defendant, Meyer Schneider?

A. At that particular time we had no idea as to what had transpired—

Mr. Leibowitz: Just a moment. We submit the witness should answer the question. He is a lawyer and we don't care for any gratuitous statements. I think he should answer the question.

(Testimony of John J. Matthews.)

The Court: Yes, answer the question, Mr. Matthews.

The Witness: Will you repeat that question?

(Question read.) Q. In addition to the instructions with reference to any conduct on behalf of Lieutenant Apperson what arrangements if any did you make with him for his conduct in the event a payment was made to him by the defendant, Meyer Schneider?

A. Lieutenant Apperson was to signify by a pre-arranged signal to us in the event he received at any time subsequent to that point he was to signify to us that he had received a [240] quantity of money or whatever much might be given to him. He was instructed to signal with his car lights if money was paid to him while riding with Mr. Schneider in Mr. Apperson's own car. He was to give another signal which consisted of the mislacing of a handkerchief in his pocket in such manner it would drop providing the payment was made in a bar or restaurant where we would not be able to observe the actual payment. And we also made plans of a general nature of what he should do in the event the payment was to be made in any other place. He was instructed that if such a payment was made that it was to be turned over to us, and, of course, he was cautioned that it was strictly voluntary on his part and we were not forcing him to do this; it was entirely up to him whether to cooperate and assist in this matter or not.

(Testimony of John J. Matthews.)

Q. All right, and those arrangements were all made at the same time instructions were given to him as you have testified? A. Yes, sir.

Q. And after that meeting what did you do?

A. I returned to Great Falls and performed other duties in connection with the case involving making necessary telephone calls to my headquarters office at Butte, Montana and to the United States Attorney's office at Billings, Montana.

Mr. Leibowitz: Your Honor, I just want to reserve my objection to the entire line of testimony.

The Court: All right. [241]

Q. And after that did you at any time after that return to the Great Falls Airbase? A. I did.

Q. At about what time and what date?

A. At approximately 3:30 on the afternoon of November 23rd I returned to the Great Falls Air Force Base with Special Agent Robert Leonard of our office.

Q. And where did you go?

A. We went immediately—upon entering the Base I drove down to the area in the vicinity of the jumper warehouse and observed a freight car, Boston & Maine freight car on a siding. It was the only car there. At that time I observed no one in the vicinity of there. I returned to the office of Special Investigation office on the Air Force Base where I proceeded to wait.

Q. And how long did you remain in the office of Special Investigation at the Great Falls Airbase?

(Testimony of John J. Matthews.)

A. I remained there until approximately 6:30 or very shortly before.

Q. And was Special Agent Robert Leonard with you during all that time? A. He was, sir.

Q. And at sometime after 6:00 o'clock or about 6:30 on the evening of November 23, 1948, what did you do?

A. I got in my car with Special Agent Leonard and O.S.I. Agents Robert Spaulding and Mr. Segal and proceeded in the direction of Great Falls with the view of following [242] Lieutenant Apperson's car.

Q. All right, after leaving the Base then what did you do?

A. I was in radio contact with our other F.B.I. car. I gave instructions to the other Agent to come east on Second Avenue North for the purpose of intercepting Lieutenant Apperson's car in the event that we were not to locate it or were too far behind it or were to miss it altogether. Upon arriving at the school at 37th Street I had not observed Lieutenant Apperson's car, which was a maroon Studebaker, and upon radio contact I was aware of the fact the other car had not intercepted them and I gathered that perhaps they had not left the base and I turned around and went east on Second Avenue North towards the East Base.

Q. On this return trip did you see Lieutenant Apperson's car? A. I did, sir.

Q. About where was it at that time?

(Testimony of John J. Matthews.)

A. At the point on Second Avenue North where the road turns in a northerly direction, which is approximately one-quarter to one-half a mile to the entrance to the gate I observed the Studebaker proceeding in a westerly direction. I immediately turned our car around and proceeded to follow him at a short distance into the city of Great Falls.

Q. And where did you follow the car with Lieutenant Apperson? [243]

A. Lieutenant Apperson's car proceeded in a westerly direction until it came to Third Street North whereupon it turned South, anyway it turned left and I followed it across Central Avenue, and then at a point on Third Street South between Central Avenue and First Avenue South I observed the Studebaker to park, in the vicinity, in the nearby vicinity of the Electric Hotel.

Q. And what did you do?

A. I proceeded to find the nearest available parking space which happened to be on First Avenue South. In other words, I drove south to the first intersection, which was First Avenue South, turned right, and right at the corner I found an available parking place. I parked my car and locked it and proceeded to walk back toward Central Avenue.

Q. Did Special Agent Leonard remain in the car or get out too?

A. Special Agent Leonard got out too.

Q. After you and Special Agent Robert Leonard

(Testimony of John J. Matthews.)

got out of the car too where did you and he go?

A. We went up to Central Avenue and at a point just east of Third Street North on the south side of Central in front of the First National Bank I met Special Agent Strahl.

Q. And did Special Agent Robert Leonard stay with you and Agent Strahl?

A. No, he did not.

Q. Where if any place did Special Agent Leonard go? [244]

A. I observed Special Agent Leonard proceed a few doors eastward on Central Avenue to a bar known as Murrill's Bar and I saw him enter.

Q. And then what did you and Agent Strahl do?

A. We proceeded to remain in the car which Mr. Strahl was driving for a matter of several minutes, possibly five or ten minutes.

Q. And then what did you do if anything?

A. Realizing that Lieutenant Apperson not seeing us——

Mr. Leibowitz: I move to strike that out; that is not responsive.

The Court: Yes.

A. Special Agent Strahl and myself shortly after seven o'clock entered Murrill's Bar.

Q. And when you entered the bar what did you do and see?

A. Immediately upon entering the bar I was approached by Special Agent Leonard.

Q. And what?

(Testimony of John J. Matthews.)

A. Special Agent Leonard mentioned that Lieutenant Apperson had just gone into the men's room. I proceeded back through the bar into the men's room where I saw Lieutenant Apperson and immediately conducted a search of his clothing. I went through his various pockets.

Q. And what did you find?

A. I found a small quantity of money. He had seventy [245] some cents in one trouser pocket, and seventy cents, I believe it was, and twenty-one cents in another pocket, and a ten-dollar bill in a wallet in his left rear pocket.

Q. And outside of other personal items was that the only money that was on his person at that time?

A. That was the only money on his person at that particular time.

Q. All right, after completing the search of the person of Lieutenant Harvey B. Apperson what did Apperson do if anything?

A. Lieutenant Apperson immediately left the men's room.

Q. And what did you do?

A. I remained there for a matter of seconds, a minute.

Q. And then what happened if anything?

A. I was just about ready to leave when Mr. Schneider walked in and I proceeded to wash my hands and then I left and Mr. Schneider left.

Q. When you say Mr. Schneider do you mean the defendant, Meyer Schneider?

A. Yes, sir, I do.

(Testimony of John J. Matthews.)

Q. And when you left the men's room leaving the defendant, Meyer Schneider, in the men's room what did you do?

A. I immediately left Murrill's Bar and proceeded to walk up and down across the street with Special Agent Strahl.

A. Seeing Special Agent Leonard leave Murrill's Bar I [246] crossed the street and joined Special Agent Leonard on the east side of Third Street South between Central Avenue and First Avenue South, and while standing with Mr. Leonard I observed Lieutenant Apperson and Mr. Schneider standing by Schneider's car which I previously said was parked on——

Mr. Eickemeyer: Schneider's car?

Mr. Lamb: You may cross-examine in just a minute.

Q. Was that the defendant's car?

A. Pardon me. Lieutenant Apperson's car. I saw them both standing there. And then I proceeded to walk down to First Avenue South. I left Special Agent Leonard there. I made a phone call or two and then proceeded to the Park Hotel.

Q. And when you entered the Park—or did you enter the Park Hotel?

A. I did, sir. I entered the Park Hotel.

Q. And when you entered the Park Hotel, whom if anyone did you see?

A. I saw Special Agent Strahl there and Special Agent Leonard, both sitting in the lobby.

(Testimony of John J. Matthews.)

Q. And what did you do?

A. I took up a position in the corner of the lobby. I expect you would call it the northeast corner of the lobby and just remained there until——

Q. Did Agents Strahl and Leonard also remain in the [247] lobby during that time?

A. They did, sir.

Q. All right, then what transpired if anything?

A. Sometime after 8:00, at approximately 8:15 I saw Lieutenant Apperson get off the elevator in the lobby of the Park Hotel. We waited for a few seconds and he gave his pre-arranged signal, whereupon I joined him in the lobby and he immediately handed me an envelope and said something to the effect that there was \$1500 in there.

Q. I will show you an envelope marked Plaintiff's Exhibit No. 14 and ask you to examine it and ask you if this is the envelope that was handed to you by Lieutenant Apperson, Lieutenant Harvey B. Apperson in the lobby of the Park Hotel at the time you have just testified?

A. This is the same envelope that was given me by Lieutenant Apperson at that time.

Q. Is it in the same condition now as it was at that time?

A. No, sir, it isn't.

Q. What is the difference?

A. At the time it was given to me it was sealed and did not have the signatures appearing on the rear side over the seal, or the flap.

(Testimony of John J. Matthews.)

Q. And was the envelope flat and empty as it is now?

A. No, the envelope had something in it at that time.

Q. All right, what did you do with the envelope?

A. I put it immediately in my pocket. [248]

Q. And then what did you do?

A. Rang for the elevator. Excuse me. I asked Lieutenant Apperson in what room Mr. Schneider was and he mentioned 340.

Q. 340?

A. 340. I rang for the elevator and mentioned to Special Agent Leonard he should take Lieutenant Apperson and give him a search to ascertain just what amount of money he had on his person at that particular time. Special Agent Strahl and myself went up to the third floor, went to room 340, knocked, and on being asked who was there we announced ourselves or I answered that we were F.B.I. Agents.

Q. And after you announced you were F.B.I. Agents what took place?

A. The door was opened and we entered. The door was opened by Mr. Schneider.

Q. You mean the defendant, Meyer Schneider?

A. The defendant, Meyer Schneider. We entered the room and I immediately placed him under arrest on the charge of bribing an Air Force officer.

Q. And that was after you entered the room?

A. That was just as we entered the room.

(Testimony of John J. Matthews.)

Q. And did Agent Strahl enter the room with you? A. He did, sir.

Q. And then what took place? [249]

A. I might add that we identified ourselves through our credentials at the time we were placing the man under arrest. We having previous information and he subsequently told me and I had this information at the time that he had a permit to carry a gun in New York City and I proceeded to make a search of his person.

Mr. Leibowitz: I am going to object to that. I think it is prejudicial and I don't think it is relevant to this case at all that he had permission to have a gun. I don't see the materiality of it. It tends to prejudice.

The Court: Well you didn't have a gun, did you? A. No, we did not.

The Court: We will cut it out. Sustain the objection.

Mr. Leibowitz: All right.

Q. All right, then what did you do?

A. Proceeded to make a search of the, as I said we made a search of his person which is customary in all cases and a search, a brief search of the room for the purpose as we do in all cases of locating any instruments by which the——

Mr. Emigh: Just a minute. We will object to this. Let him tell what he did.

A. I made a search of the room and I took the money from Mr. Schneider's pocket and placed

(Testimony of John J. Matthews.)

it on the floor and [250] instructed Special Agent Strahl to count it. I asked him if he had additional money and he said he did and brought over a kind of traveling bag on the bed. I opened the bag and extended it to him and asked him if he would take the money out and the defendant reached in the bag and took money out and handed it to me and then laid it on the floor and I observed Mr. Strahl making a count of the money.

Q. Do you know at this time how much money was counted in front of the defendant, Meyer Schneider, which he took from his suitcase in the room at that time?

Mr. Eichemeyer: Just a moment. This testimony the defendant objects to upon the ground and for the reason it is incompetent, irrelevant and immaterial; that the crime of which he is testifying, the agent is testifying was not committed in his presence; that he had no search warrant or any warrant of any kind to go through the property or take any money from the defendant or from any of his belongings or out of his room.

Mr. Lamb: Your Honor, the witness has testified that the defendant, Meyer Schneider, removed the money from his bag and handed it to the agent.

Mr. Eickemeyer: And for the further reason it is no part of the commission of the offense because the money nor any of the property in that room or on his person was used in the commission of this offense and it is prejudicial [251] to this defendant.

(Testimony of John J. Matthews.)

The Court: Yes, it is after the offense was committed.

Mr. Lamb: I will withdraw the question.

The Court: I think you better. I will sustain the objection.

Q. All right, then after that what did you do?

A. I prepared a list of the money——

Mr. Eickemeyer: Now, if the court please, I don't think it is fair for counsel to go into this matter after the objection has been sustained.

Mr. Lamb: I merely asked him what he did.

The Court: I think we will stand on that objection, or sustain it.

Q. Then what did you do?

A. We took Mr. Schneider from the room. I made suggestions to him concerning the safety of his property and informed him we were not seizing that particular property. However, just before leaving the room I observed on the telephone stand a piece of paper and I made a quick glance at it.

Mr. Eickemeyer: Now, if the court please, this is all happening after he has been arrested for the commission of the crime.

The Court: Naturally and we will see what it is [252] about and see if it has any connection or relevancy to the act itself.

A. I observed a notation appearing on the paper concerning overcoats, parkas,——

Mr. Eickemeyer: Now, just a minute, if the court please, I submit that Mr. Matthews, the witness

(Testimony of John J. Matthews.)

here, is a lawyer himself and duly admitted to practice in the courts of the state of Montana——

The Court: Never mind the preliminaries. What is the objection?

Mr. Eickemeyer: My objection is he is getting indirectly evidence in here that has been ruled is not admissible. He can't testify what the list says. If they have a list, let them give it to us and we will object in the proper way, but this way they are trying to get in indirectly something I don't think they can get in.

Q. Did you take a list from the room of the defendant, Meyer Schneider, which you found on the telephone stand at that time?

A. I did, sir.

Mr. Leibowitz: I do want to object to the question "Did you make a list?"

Mr. Lamb: Did he take a list.

Q. I will show you a sheet of paper marked Plaintiff's Exhibit 3 and ask you if this is the sheet which you took from the defendant's room at that time? A. It is, sir. [253]

The Court: At the time you made the arrest, Mr. Matthews?

A. Yes, your Honor.

Q. (By Mr. Lamb): And appearing on the reverse side thereof are some initials and dates in ink. Will you tell us when those were placed here and by whom if you know?

A. The initials J.J.M. and the date 11-23-48 was

(Testimony of John J. Matthews.)

placed on there by myself shortly thereafter that same evening.

Q. And the other initials?

A. The other initials H.E.S. and the date 11-23-48 were placed on there by Mr. Special Agent Strahl. And the initials that appear to be R.M.L. and the date 11-23-48 were placed on there by Special Agent Robert Leonard.

Q. And with the exception of those initials and the dates which you have just read is the paper in the same condition as it was when you took it from the room of the defendant immediately after his arrest?

A. With one exception, sir.

Q. All right, if you will point that out. Oh, and with the words appearing here in ink "Plaintiff's Exhibit No. 3"?

A. Yes, sir.

Q. And outside of that that is the only change that has been made in this particular instrument?

A. Yes, sir.

Mr. Lamb: At this time we will offer in evidence Plaintiff's Exhibit No. 3. [254]

Mr. Eickemeyer: To which the introduction of Plaintiff's Exhibit 3 the defendant objects upon the ground and for the reason that it is incompetent, irrelevant and immaterial, no proper foundation having been laid. That it is not part of anything that was used in the commission of the crime. That the evidence has shown that the defendant had already been placed under arrest and that the crime

(Testimony of John J. Matthews.)

for which he was arrested had been completed. That the officer had no search warrant or any authority whatsoever to take these papers from the person or the property of the defendant.

Mr. Lamb: I might state, your Honor, that appearing on the face thereof——

Mr. Eickemeyer: Just a minute——

Mr. Lamb: I might state, however, this exhibit has been previously identified by a witness who appeared before him on the stand, Lieutenant Harvey B. Apperson.

Mr. Eickemeyer: It doesn't make any difference who it was identified by.

Mr. Lamb: That is your opinion.

Mr. Angland: It was seized incident to arrest, your Honor, and if the back of the sheet is observed, it has a direct relationship to the charge made in the indictment and the evidence heretofore offered by the Government.

The Court: What were you going to call my attention to? [255]

Mr. Lamb: The fact that Lieutenant Apperson already identified the sheet in addition to this particular data and the notations appearing on the reverse side thereof having direct relationship to the crime charged in the indictment being incident to the crime.

The Court: Yes, because of the contents of it why it is relevant; there is no question about that. And it was picked up by the officer as an incident

(Testimony of John J. Matthews.)

of the arrest at the time he was arrested. I will overrule your objection.

Mr. Eickemeyer: Note an exception.

Mr. Lamb: I will read this Plaintiff's Exhibit 3.

(Whereupon Mr. Lamb read Plaintiff's Exhibit 3 to the jury.)

Mr. Lamb: If you care to look at this.

The Court: Now that first page so far as I can see has no application to this page or the property other places I don't think has anything to do with this.

Mr. Lamb: Your Honor, Lieutenant Apperson testified that the defendant, Schneider, made that abstract himself in the purchasing and contracting office which pertains to the contract in which he was successful.

The Court: And the other part of it pertaining to the Great Falls Base, was that made in his presence too?

Mr. Lamb: No.

The Court: He saw him making this same list on [256] the front page?

Mr. Lamb: On the front part.

The Court: Are you sure he absolutely identified it when on the stand as the paper he saw the defendant writing?

Mr. Lamb: That is correct, your Honor.

The Court: All right.

Mr. Leibowitz: Of course we have an exception.

(Testimony of John J. Matthews.)

The Court: Then that may go in. It is a means of identification of the paper itself. Oh, yes, you may have your exception. Proceed.

(Whereupon said Plaintiff's Exhibit No. 3, offered and received in evidence, is a part of this record.)

Q. (By Mr. Lamb): All right, after obtaining the slip of paper which I have just read to the jury what did you and Agent Strahl and the defendant, Meyer Schneider, do?

A. We left the room and at approximately quarter to nine and went in my car, after leaving the key at the desk, and went to the Federal Building where he was taken into the Marshal's office.

Mr. Leibowitz: I object to anything that followed the arrest as no part of the proof.

The Court: I will sustain the objection. You don't need to go any further on that. [257]

Mr. Lamb: At this time we will offer in evidence Plaintiff's Exhibit No. 4.

Mr. Eickemeyer: No objection.

The Court: It may be received in evidence.

(Whereupon said Plaintiff's Exhibit No. 4, offered and received in evidence, is a part of this record.)

Q. (By Mr. Lamb): Mr. Matthews, you stated with reference to Plaintiff's Exhibit No. 4, the envelope, that at the time it was handed to you by Lieutenant Apperson that you placed the same in

(Testimony of John J. Matthews.)

your pocket and that it had something contained therein? A. Yes.

Q. Did you later examine and open the envelope which has been now admitted as Plaintiff's Exhibit No. 4? A. I did, sir.

Q. And what did you find therein?

A. I found 50 twenty dollar bills and 50 ten dollar bills.

Q. Totaling how much money?

A. Totaling \$1500.

Mr. Leibowitz: We are not going to make it difficult and save a lot of time. We will admit if he wants to offer the \$1500 in evidence we have absolutely no objection.

Mr. Lamb: All right. [258]

Mr. Eickemeyer: We don't admit it is in that envelope.

Q. You have it all sealed; will you open it?

Mr. Leibowitz: I will admit that if he wants to admit it, and we will save a little time anyway.

Mr. Angland: Will you admit this is the same \$1500 that was in the envelope?

Mr. Eickemeyer: Yes.

Mr. Leibowitz: We will admit that.

Q. Mr. Matthews, this has been in your possession and this is the money you removed from the envelope Lieutenant Schneider gave you?

A. Yes, sir.

The Court: Not Lieutenant Schneider.

(Testimony of John J. Matthews.)

Mr. Lamb: Or I mean Lieutenant Apperson?
I am sorry.

A. Yes.

Q. And this money is now contained in an envelope now marked Exhibit 13, which I now offer in evidence? A. Yes.

Mr. Eickemeyer: No objection.

The Court: It may be received in evidence.

(Whereupon said Plaintiff's Exhibit No. 13 offered and received in evidence is a part of this record.)

Q. After the removal of the defendant, Meyer Schneider, from the room and his arrest was a charge placed against him? [259]

A. Yes, sir, there was.

Q. And when and where?

Mr. Leibowitz: I object to that as wholly irrelevant, immaterial and incompetent; he is here in court now on a charge.

The Court: Yes, I think so. I think I will permit him to show the usual procedure required by law was carried out at that time. You may go that far and no farther.

A. I signed a complaint before United States Commissioner Eric B. Parsons at approximately ten or ten-thirty that evening and the defendant was arraigned shortly thereafter the same evening.

Q. On what charge?

A. On a charge of bribing an Air Force officer.

(Testimony of John J. Matthews.)

Q. And was bond set by the Commissioner at that time?

Mr. Leibowitz: I don't think—it doesn't make any——

Q. And was a commitment issued?

A. Yes, sir.

Q. Before the arraignment before the United States Commissioner and bond set and commitment issued did you have a conversation with the defendant, Meyer Schneider, relative to the offense on which he had just been arraigned?

A. I did, sir.

Q. Will you relate what if anything you told him before engaging in this conversation? [260]

Mr. Eickemeyer: I object to it as wholly irrelevant, immaterial and incompetent. We are not claiming any rights have been violated; that is not our defense.

Mr. Angland: Any admissions made after arrest would be admissible.

Mr. Eickemeyer: I don't think he is attempting to prove admission. I think he is showing his constitutional rights were protected.

Mr. Angland: You have to lay a foundation.

Mr. Eickemeyer: Any way we object to it until a foundation has been laid.

Mr. Lamb: That is what I am attempting to do.

Mr. Eickemeyer: He hasn't done it yet.

The Court: Give him a chance.

Mr. Lamb: Read the question.

(Testimony of John J. Matthews.)

(Question read.) Q. Will you relate what if anything you told him before engaging in this conversation?

A. I told him that he was not required to make any statement or to make any admissions to us. I told him we were federal officers and he was aware of that fact. I told him under the Constitution of the United States he need not say anything and I told him anything he might say might or could be used against him in court. I told him we were not making any threats or promises to him; in that connection that if he didn't care to he didn't have to tell us anything. [261]

Q. Did you give him any advice concerning an attorney?

A. I told him he was entitled to have his attorney.

Q. And after so advising the defendant of his constitutional rights did you have a conversation with him relative to the offense of which he was charged?

Mr. Eickemeyer: If the court please, we would like to have the time and the persons present and I don't think the place has been identified.

The Court: Lay the foundation.

Q. Did you have a conversation with him?

A. I did, sir.

Q. Who was present?

A. Special Agent Strahl of the F. B. I. and O. S. I. Special Agent Robert Spaulding.

(Testimony of John J. Matthews.)

Q. And where was the conversation had?

A. In the F. B. I. office in the Federal Building, Great Falls, Montana.

Q. And at about what time?

A. The conversation began five minutes after one o'clock on the morning of November 24th.

Q. 1948? A. 1948.

Q. And you may now relate the conversation which you had with the defendant as far as the same may relate to the crime with which he was then charged?

A. I discussed with him the manner—— [262]

Mr. Eickemeyer: Now just a minute, if the court please. I submit the other way, what he said, what he saw, whether he discussed anything with him.

Q. All right, what was said by him and what was said by yourself.

A. Schneider said to me he had become aware of the fact salvage and scrap material were being offered at the Great Falls Air Base through a trade publication, which I believe he said was named *Salvage*, and mentioned he had communicated with officers here and had been awarded a bid on scrap items, and that he had found it necessary to come to Great Falls to secure those materials. And he had been in communication with them and they said it would be impossible for them for them to ship those things to him or pack them and ship them to him. He mentioned—I asked him specifically whether he

(Testimony of John J. Matthews.)

had given any money to Lieutenant Harvey B. Apperson. At first he said—the first time I asked him that question he said no he had not given Lieutenant Apperson any money. I asked him later about the envelope and I asked him if he had given that envelope to Lieutenant Apperson and he said he had not. I asked him what he and Lieutenant Apperson talked about up in the room at the time the payment was made. He said they discussed several things. And I got back to the question again. I asked him, now you—or words to that effect—you said you did not give Lieutenant Apperson any money. He said, no, I [263] didn't say that, I didn't give him money for anything that had to do with the Great Falls Air Force Base. So I asked him did you give him any money, and he very politely said he did not care to answer that question. I asked him whether he had given Lieutenant Apperson any money to invest in a real estate transaction and then he gave me the same answer, he politely declined to answer that question. I asked him other things that may have slipped my mind at the moment.

Q. Did you make any notations at the time of this conversation from which you could now refresh your recollection?

A. I made notations at that time and shortly thereafter.

The Court: You made notations at the time you were talking to him?

(Testimony of John J. Matthews.)

A. I did, your Honor.

The Court: Well you can refer to it to refresh your recollection.

Q. (By Mr. Lamb): Will you look over the notes you took at the time and immediately thereafter for the purpose of refreshing your recollection as to any further conversation you had with the defendant at that time. Did you find anything further by way of refreshing your recollection other than what you have testified?

A. I did, sir.

Q. What was it?

A. I asked him concerning his dealings with the personnel [264] at the Base. I asked him first whether he had ever contacted Lieutenant Apperson by phone and he said he hadn't and subsequently he said he did talk to Lieutenant Apperson on one occasion and Lieutenant Apperson informed him at that time he would have to come to Great Falls to obtain the shipment of scrap and it would not be possible for them to make arrangements for them to ship it to him.

Q. Do I understand it he first said he did not talk to Lieutenant Apperson at all by telephone?

A. Yes, sir.

Q. And then subsequently said he had talked with him as you have just related?

A. Yes. I asked him whether during his telephone conversations or other communications or while in conversation with Lieutenant Apperson he

(Testimony of John J. Matthews.)

had ever made any proposition of an irregular nature and he said he had not. I asked him specifically whether Lieutenant Apperson had ever made such a proposition to him and he said Lieutenant Apperson had not. He told me about going to the Base on the morning of November 22nd and met him, Lieutenant Apperson, and looking around at the various materials at the warehouse there. He admitted or he told me that he left the Base in a cab shortly before noon on the morning of the 22nd and that he did not or was not in contact with Lieutenant Apperson again until the afternoon of November 23rd when he went into the Base and spent the afternoon with Lieutenant Apperson. He stated at [265] that time they were loading materials on to a freight car and that he was there until approximately six or shortly thereafter when they came to town. I asked him specifically if during that period Lieutenant Apperson had made any irregular suggestions or propositions to him concerning the disposal of the property and he said such had not been done, and I asked him whether he had made similar propositions to Lieutenant Apperson and he said he had not done that either. He related he came down to town with Lieutenant Apperson in the latter's car and had a few drinks at Murrill's and went up to the hotel room, into the hotel room, and I believe I have related what happened in the hotel room previously.

Mr. Lamb: You may cross-examine.

(Testimony of John J. Matthews.)

Cross-Examination

By Mr. Leibowitz:

Q. Mr. Matthews, I understand you are an Attorney admitted to practice in the state of Montana?

A. Yes, sir, I am.

Q. Now you were first called in sometime on November 23, 1948, that is correct?

A. November 22nd, sir.

Q. And the following day you went to see the Provost Marshal?

A. No, sir. [266]

Q. And from there you went to see the Colonel Chennault?

A. That isn't exactly correct, sir. I went to see the O. S. I.

Q. Yes, and after you saw him you went to see the Provost Marshal?

A. No, I didn't see the Provost Marshal.

Q. And the following morning you went into Colonel Chennault's office?

A. Colonel Chennault's office.

Q. Why did you go to see Colonel Chennault?

A. At the suggestion of Lieutenant Apperson. If I may explain further, Lieutenant Apperson stated he was willing to cooperate but that he was interested in making a career of his Army service and he wanted expert legal military advice what he could do. He mentioned Colonel Abdalah is a very competent attorney and that he would like to talk it over both with Colonel Chennault and Colonel

(Testimony of John J. Matthews.)

Abdalah, and that was our reason for going there.

Q. And that was the only reason he did?

A. That seemed to be his main reason. I couldn't say what all the reasons were.

Q. Well before you did see Colonel Chennault did you discuss all this plan did you with reference to having Mr. Schneider pay money?

A. Yes, sir, we did.

Q. Discussed it thoroughly, didn't you? [267]

A. We discussed it both before and after very thoroughly.

Q. Did Lieutenant Apperson say that he can't do those things because he has no authority to do some of those things you requested him to do?

A. I don't believe he said anything like that to me, sir.

Q. Well did the question arise whether he had a right to have merchandise loaded from a warehouse into a car after hours without some permission?

A. No, I don't believe we discussed that phase of it, sir.

Q. That didn't come up at all?

A. Not with regard to our conversation. Now maybe perhaps—I want to understand you correctly. You mean we discussed his authority under the various regulations to load cars and unload materials?

Q. Whether he had a right to do those things?

A. No, we didn't go into that at all.

(Testimony of John J. Matthews.)

Q. Supposing Colonel Chennault was not available and supposing he was left out of the picture altogether; did that question ever arise?

Mr. Angland: We object as calling for an answer on a question based on hypothesis not shown to exist.

Mr. Eickemeyer: This is cross-examination.

Mr. Angland: This is a hypothetical question not based upon any facts in evidence and does not tend to prove [268] or disprove any issue in the case.

The Court: I hardly think it is a proper question. Frame it a little differently.

Q. Mr. Matthews, you didn't make the suggestion immediately Colonel Chennault should be told of this thing and to get the approval of Colonel Chennault, did you?

A. Now I wouldn't say I made that suggestion, sir. We were discussing things, Apperson and myself.

Q. Just you two?

A. And other individuals, representatives of the Office of Special Investigations.

Q. Was Colonel Abdalah there?

A. Not at the time we started talking about the matter.

Q. He was there later on?

A. He was there later when we met with Colonel Chennault. The reason, and I believe you asked me why Lieutenant Apperson went to Colonel Chen-

(Testimony of John J. Matthews.)

nault, now I may have had a reason been told me but it was not my doing we went to Colonel Chennault and I think it was Lieutenant's reason, and the reason was he intended to make a career out of the Air Force.

Q. That is what he said to you?

A. That is what he said it was.

Q. Did Colonel Abdalah say anything about it was wise under those circumstances to see the Commanding Officer before anything like this takes place at the Base? [269]

A. Now he might have talked to Lieutenant Apperson when I got there that morning. All I know, sir, is that when I got to Colonel Chennault's office Colonel Abdalah was there and we met in Colonel Chennault's office, all sat around the desk and both officers were there.

Q. How long did you stay over at Colonel Chennault's office?

A. Oh, I would only be able to give you a guess.

Q. Ten minutes, half an hour?

A. I would say half an hour.

Q. And did Colonel Chennault ask you any questions? A. I believe he did, sir.

Q. What sort of questions did he ask you?

A. The actual questions I probably couldn't recall but he was interested for one thing in whether the cooperation of Lieutenant Apperson would result in any embarrassment to the Air Force or to the Base Personnel, and he was interested in know-

(Testimony of John J. Matthews.)

ing, of course, whether—of course he mentioned the fact that I might be an attorney, but he was interested in knowing where I got my background or advice I was giving and I told him I was giving him information obtained by me from the United States Attorney who is in effect my legal counsel in this case.

Q. Did Colonel Chennault say anything about the necessity of waiving certain regulations in order to have this [270] plan consummated?

A. I am rather certain he made no mention of any regulations.

Q. Did you tell him it had to take place in a restricted area late at night after hours?

A. Well now at that time you must understand that I didn't have much idea what was going to be done.

Q. Well everything was planned at that time?

A. It was planned. Now I am familiar with the Base but not to the extent I know a restricted area, and I never brought the question up. I don't think anyone else discussed the question of the restricted area.

Q. Did anybody bring up the question that G. I. labor was going to be furnished?

A. I don't have the recollection it was brought up.

Q. Is there anything in your records or notes that took place in the office there?

(Testimony of John J. Matthews.)

A. I personally have no records of what took place there.

Q. The only records you made pertaining to the case of Meyer Schneider is only what took place after the arrest, am I correct?

A. Let me dwell on that a moment, sir. No, that isn't exactly correct.

Q. You have other records?

A. I have other records. [271]

Q. Do your records indicate what took place at the Air Base?

A. When I say records that I have, I have my own personal notes and I have notations I think remaining of my interviews.

Q. Have you got those notations here?

A. I have most of my notes; in fact all of them I believe are here, sir.

Mr. Leibowitz: Would I be permitted to examine those notations, your Honor?

The Court: Well I think not, if Mr. Matthews can testify, if he can testify from it.

Mr. Leibowitz: Well I would like to make a record here. I want to note my objections to the refusal of the court to permit me to examine the records made by the F. B. I. Agent, Mr. Matthews, to any transactions or negotiations he had with Meyer Schneider or anybody with reference to this case.

The Court: Well I will permit him with the notes he can look at the notes to, with reference

(Testimony of John J. Matthews.)

to any conversation or interview with Meyer Schneider, the defendant. But he has made notes no doubt about many other things in connection with the case that he couldn't testify to and wouldn't be competent evidence at all, and I don't think you have any right to examine notes of that kind. If it was [272] competent evidence here, he probably consulted with the United States Attorney and found out what would be competent evidence and what would be admissible and what would not. Now your wholesale request, of course, will be denied.

Mr. Leibowitz: I am only interested in those notes which have to do with his investigation of the case is all.

The Court: I am interested in those notes which have to do with competent evidence here in this case. I will overrule your objection.

Mr. Leibowitz: I have my exception.

The Court: Yes.

Q. Now have you any notes at all, Mr. Matthews?

A. Yes, I have, sir.

Q. With reference to any conversation you had with General Chennault?

A. I believe I have none here.

Q. You haven't got them in court?

A. I don't believe I have any of those notes at all.

The Court: He spoke about notes and conversations with the defendant. Now you are inquiring

(Testimony of John J. Matthews.)

about something that probably would not be admissible in evidence.

Mr. Leibowitz: I want to find out if he has anything there that may contradict him. There may very well be something written down that contradicts what he says.

The Court: I don't think you have the right to go [273] on a general fishing expedition of that kind.

Mr. Leibowitz: All right, I note my objection and I would like to have my exception, that is all.

The Court: It has already been passed on two or three times.

Q. Mr. Matthews, did Colonel Abdalah make any suggestions as to what should be done with reference to any difficulties with respect to the loading and removal of the merchandise from the Air Base?

A. I don't believe he did, sir.

Q. Did you tell Colonel Chennault that it would be necessary to remove merchandise from the warehouse and load it on the truck and before payment was made to the officer, Mr. Greene?

A. I don't believe it went into that detail, sir.

Q. You didn't go into that detail?

A. No, sir.

Q. In any event Colonel Chennault told you to go on and do whatever you have to do?

A. That is approximately correct, sir. If I may add to that. He didn't tell me what to do, not being under his jurisdiction. He made any suggestions

(Testimony of John J. Matthews.)

or anything regarding that to Lieutenant Apperson.

Q. In your resence was it done?

A. In my presence he was given—if you allow me to put it this way—Lieutenant Apperson was given authority by [274] Colonel Chennault to cooperate with the Federal Bureau of Investigation in the investigation of the case.

Q. Did Lieutenant Apperson tell you that it would be necessary to violate some of the rules and regulations before anything like that could take place?

A. Well, sir, I believe that was—what do you mean by rules and regulations?

Q. The removal of merchandise from a warehouse at night in a restricted area using Government labor?

A. You mean more or less administrative regulations and things like that? It was rather apparent to both of us what it would amount to in other circumstances the stealing of property would not be right, so I don't think we discussed it back and forth.

Q. You recognized it couldn't have been done in any other way unless approved by the officer in charge unless the stuff was stolen?

A. That was rather apparent. We didn't discuss that phase of it.

Q. That was the only way it could have been done by Lieutenant Apperson if Colonel Chennault had not approved the activities?

(Testimony of John J. Matthews.)

A. I don't believe I am qualified to answer what authority Lieutenant Apperson had and what authority Colonel Chennault had—well, I mean I don't feel I could answer your [275] question, sir.

Q. Well you said it was perfectly apparent it could only take place if the stuff was stolen?

A. I don't believe I said that either.

Mr. Leibowitz: He said something about stealing.

Mr. Lamb: Yes, he said something about it.

Mr. Leibowitz: Let's go back to the answer.

Mr. Lamb: Read the answer.

A. You mean more or less administrative regulations and things like that? It was rather apparent to both of us what it would amount to in other circumstances the stealing of property would not be right, so I don't think we discussed it back and forth.

Mr. Leibowitz: All right, I will be satisfied with that answer.

Q. Mr. Matthews, your ultimate goal was achieved, was it not; that was the arrest of Mr. Schneider?

A. My ultimate goal, sir, I think was to enforce the law if there were violations there of it.

Q. Well whatever was planned was not to enforce a law, was it?

Mr. Angland: Just a minute. I will object to that, your Honor. I think the evidence can be

(Testimony of John J. Matthews.)

weighed by the jury to determine whether or not that was true or not.

The Court: I will sustain the objection to that question. [276]

Q. Well if you wanted to enforce the law, couldn't you have said to Mr. Schneider: "Now, look, these things are not right." And then he would not have done it and the law would have been enforced the proper way?

Mr. Angland: Just a minute. We object to that. That isn't the law on the matter at all and it is argumentative.

The Court: Sustain the objection.

Mr. Leibowitz: I will take an exception to that.

The Court: All right, take an exception.

Q. Mr. Matthews, you don't know of your own knowledge whether the instructions in the plans that you had with Lieutenant Apperson were complied with?

A. Were what, sir?

Q. Were complied with?

A. Not from my own knowledge as to all of them.

Q. You don't know, Mr. Matthews, whether the admonition with reference to the origin of a bribe was complied with?

A. To my own personal knowledge I do not, sir.

Q. Did you take into consideration, Mr. Matthews, and did you discuss it as part of your instructions the possibility that Mr. Schneider may

(Testimony of John J. Matthews.)

not bite, so to speak? Did you understand that question, bite? A. I did, sir. [277]

Q. All right?

A. And the commission did not enter into our discussions at all.

Q. Go ahead?

A. In other words, it wasn't a question of biting or not; it was a question of obtaining evidence in the event Mr. Schneider were to violate the law.

Q. Of course, you know something about the law of entrapment, don't you? A. Something.

Q. And you try to skirt around it as much as you can in your instructions?

Mr. Angland: Just a minute. Argumentative.

The Court: Sustain the objection.

Mr. Lamb: Be fair to the witness.

Q. Mr. Matthews, not only were you a lawyer but you also called in Mr. Lamb and you wanted to make sure that if Mr. Schneider is ultimately arrested the evidence against him would be such that there would be a conviction?

Mr. Angland: Now, just a minute——

The Court: Yes, I will sustain the objection to that question too. That is an improper question.

Mr. Leibowitz: I have an exception to that?

The Court: Yes, take it.

The Court: Your object was to comply with the law, Mr. Matthews, wasn't it?

A. That is correct, your Honor. [278]

The Court: You had no vindictive feeling against this defendant or anybody else?

(Testimony of John J. Matthews.)

A. None whatsoever, sir.

Q. (By Mr. Leibowitz): Mr. Matthews, you were very cautious in your instructions to Lieutenant Apperson that he shouldn't make any ovations, as he called it, to Mr. Schneider, isn't that so?

A. I exercised care in instructing him, sir.

Q. You were very careful to emphasize that fact to him? A. Yes, sir.

Q. You knew that it was necessary as part of your case that the thought should come from Mr. Schneider rather than from Lieutenant Apperson?

Mr. Angland: Just a minute, Mr. Matthews. We object to the form of the question, your Honor. There isn't any testimony by this witness that he was trying to punish Mr. Schneider.

Mr. Leibowitz: It is not suggestive.

Mr. Angland: That question suggests that very thing. It is suggestive of that very situation.

Mr. Leibowitz: I don't think the question suggests it at all.

Mr. Angland: It is an attempt on the part of defense counsel to avoid the court's ruling is the exact intention. [279]

Mr. Leibowitz: I think it is a fair question and follows the other question; nothing improper about that. He stated he emphasized very carefully that fact to Lieutenant Apperson that he shouldn't start anything but let the thing be started by Mr. Schneider, and I am just following it right through.

(Testimony of John J. Matthews.)

The Court: If he has answered that question, let it stand.

The Court: You gave him instructions as to the law in accordance with your advice given you by the United States Attorney to see that the law was complied with and there was no violation of it on your part anywhere?

A. That is true, your Honor.

The Court: Yes. What do you suppose an officer is appointed to do; to investigate and carry out the law. You are going into this.

Mr. Leibowitz: Of course, the crime had not been committed yet at that time.

The Court: The inferences you draw are not fair to the witness.

Mr. Leibowitz: May I have an exception to the remarks of the court?

The Court: Certainly you may have them; a dozen if you want them. [280]

Q. (By Mr. Leibowitz): Mr. Matthews, did you tell Lieutenant Apperson to put in front of Mr. Schneider a list of materials as contained in Plaintiff's Exhibit—what is it?

Mr. Lamb: I don't know. The exhibits are up there.

Q. Plaintiff's Exhibit 12?

A. No, sir, I did not.

Mr. Angland: What was the answer to that question?

A. No, sir, I did not.

(Testimony of John J. Matthews.)

Q. Did Lieutenant Apperson tell you that he had put that list in front of him as the starting point, after later on in the evening when you saw him?

A. Yes, several days later Lieutenant Apperson related to me substantially the same story including this he related today.

Q. Did you ask Lieutenant Apperson whether he started anything, whether he originated anything?

Mr. Angland: Just a minute. We will ask he fix the time when he asked Mr. Apperson whether he started anything.

Q. On November 23rd is the only time we have.

A. I don't recall, sir, exactly what I did ask Lieuteant Apperson except for the facts of the case, or I did ask him quite specifically about the facts of the case.

Q. Well weren't you concerned very much with the initiation of the negotiations?

A. I personally was not concerned. My job was to find [281] the facts.

Q. To find out whether you had a case so that the law can be enforced?

A. My interest, sir, is to get the facts as they develop.

Q. I haven't asked you that question.

A. Maybe I had better have the question repeated, sir.

Mr. Leibowitz: It's all right.

(Testimony of John J. Matthews.)

(Question read.) Q. To find out whether you had a case so that the law can be enforced?

A. I was not, sir.

Q. You didn't care if the thought came from Mr. Apperson, is that what you say now?

A. I say I was not concerned about——

Q. Well you were interested?

A. I was interested, sir.

Q. And you wanted to follow to find out if your instructions were followed in that respect anyway?

A. Yes, sir, I guess I was.

Q. And you interrogated with reference to that?

A. I did, sir.

Q. Then he told you, did he, that he put that file in front of him and kept his mouth shut?

Mr. Angland: Just a minute. What he told this witness, what Apperson told this witness after the crime is committed is unimportant, immaterial and incompetent so far as [282] the jury is concerned. The witness Apperson has just testified in person and what conversation he had with Mr. Matthews after the alleged offense occurred and any statement then would not be competent evidence now.

The Court: Well I think very likely your objection is good.

Mr. Leibowitz: All right, I will have my exception.

Q. Did you at any time after the arrest or during the pendency before the arrest ask Lieutenant Apperson how the thing is coming along?

(Testimony of John J. Matthews.)

A. Yes, sir, I did.

Q. You did? You were very very anxious, weren't you, to enforce the law?

Mr. Angland: If it was violated. Just a minute. We object to that question.

A. If it was violated.

Q. If it was violated, weren't you? At the time you asked him how the thing was coming along no law was violated yet, was it?

A. Sir, I didn't ask him how the case was going.

Q. Well how the thing was progressing?

A. I asked him some questions concerning the case and that is the only occasion I saw him further, and that is with Mr. Schneider on the afternoon of the 23rd.

Q. All right? [283]

A. That occasion occurred in the men's room of Murrills Lounge. I asked him merely where he was going, or words to that effect, and that was the extent of my inquiry, sir.

Q. At that time no money was paid; you knew that?

A. I knew that sir. I suspected that, sir.

Q. You saw him there?

A. He didn't give us the signals pre-arranged for.

Q. He didn't give you any signals?

A. No.

Q. So you knew the money hadn't been passed yet?

A. That is right.

(Testimony of John J. Matthews.)

Q. But you were still concerned with enforcement of the law? A. Yes, that was my job.

Q. That is your job. You didn't place Mr. Schneider under arrest at that point, did you?

A. At which point was that, sir?

Q. Right in the men's room. Mr. Schneider was there, wasn't he? A. He was, sir.

Q. Well why didn't you place him under arrest?

A. I had no reason for placing him under arrest.

Q. You mean no crime had been committed yet?

A. I am not in a position to draw those conclusions, sir; we have the authority from the United States Attorney to decide whether or not we shall arrest a man unless we actually catch him in the commission of a felony, and I [284] hadn't been advised by the United States Attorney to make the arrest of anyone at that particular point.

Q. When the car was loaded and after it was loaded and the stuff was put on the car and wasn't paid for you didn't put Mr. Schneider under arrest at that point?

Mr. Angland: Just a minute. I don't think this witness has testified, your Honor, whether he knew when the car was loaded.

Mr. Leibowitz: He said he was right there at the time.

The Court: He did not. He did not know the details in reference to it.

Q. (Bp Mr. Leibowitz): Didn't you, Mr.

(Testimony of John J. Matthews.)

Matthews, testify you were there when they were loading the car?

A. No, sir, I don't believe I did.

Q. Were any of your men there?

A. I doubt it.

Q. In other words, the loading of the car took place in your absence? A. That is correct, sir.

Q. Did you know that the car was loaded, when it was loaded?

A. Not until late in the evening of the 23rd.

Q. And then you knew it when Lieutenant Apperson went out of the Air base with Mr. Schneider, didn't you? [285]

A. I didn't know it then, sir.

Q. Didn't you follow his car?

A. I followed his car.

Q. Did you follow it before the car was loaded?

A. I didn't know what happened to the car. I didn't even see the car. At the point at which I was located at the Base was some distance away from the car and I didn't see the car except on the occasion when I first went there.

Q. Let's understand you. Do you mean to say to this jury you didn't know that car was loaded when you followed Lieutenant Apperson and Mr. Schneider late at night on November 23rd out of that Airbase?

A. I didn't even see the car, sir. It had been reported to me that the car was being loaded. That came in a round-about way from the O.S.I.

(Testimony of John J. Matthews.)

Q. But you were anxious to know whether it was loaded anyway? A. I don't believe I was, sir.

Q. You wanted to know it was being loaded, you were curious anyway? A. I was curious.

Q. All right, now you knew just as soon as that stuff was loaded in the car and Mr. Schneider was not going to pay for it that he violated a law right there so that you can put him right under arrest?

Mr. Angland: Just a minute. [286]

The Court: Wait a minute. That is a very improper question. How do you know, how can you assume that he knew that the law was violated or that he was not to pay for it?

Mr. Leibowitz: Well, if the Court please, on a pre-arranged plan then he knew what was taking place.

The Court: I will object to the question if counsel don't.

Mr. Lamb: The witness testified he didn't.

Mr. Leibowitz: All right, I will have my exception.

Q. (By Mr. Leibowitz): Did Mr. Lamb tell you that Mr. Schneider should not be put under arrest until he actually paid the money?

A. Words to that effect he did, sir.

Q. Did you think, Mr. Matthews, that the crime had not been committed in the absence of payments of any money?

Mr. Lamb: To which we object.

Q. In other words, is it necessary to enforce the

(Testimony of John J. Matthews.)

law by having money passed from Mr. Schneider to Mr. Apperson?

Mr. Angland: Just a minute. That is asking this witness to interpret the law; that is what the Court does. This witness further testified he acts on the advice of the United States Attorney's office.

The Court: I will sustain the objection.

The Court: You can take another exception, Mr. Leibowitz. [287]

Q. Of course, you didn't know, Mr. Matthews, whether Mr. Schneider had paid for the merchandise or not?

A. I didn't know that, sir.

Q. Did you know whether the stuff from 1045 had been put on the car or not?

A. I didn't know that either, sir.

Q. As far as your knowledge went it might just as well be the only thing that was put on the car was the stuff he legitimately purchased and paid for?

A. Yes, sir, other than what Lieutenant Apperson told me.

Q. And it may very well have been while you were running along after him he might have been completely anxious——

Mr. Lamb: To which we object on the grounds there is no evidence now before this court that John Matthews, the agent now on the stand, was running after——

Q. Or trailing or tracking——

(Testimony of John J. Matthews.)

Mr. Lamb: Or trailing or tracking or anything else.

The Court: Sustain the objection.

Q. Mr. Matthews, are you familiar with the law of bribery? A. To some extent, sir, I am.

Q. Do you know the penalties? Just yes or no. I am not going to ask you for them.

A. Yes, sir.

Q. In other words, you knew, Mr. Matthews, that the penalty and so far as the fine is concerned is proportionate or bears a certain relationship to the amount of money that [288] is passed from the defendant to the officer, you know that?

A. I do, sir.

Q. Were you interested, Mr. Matthews, to try and have Mr. Schneider pass as much money as possibly could be passed? A. Not a bit, sir.

Mr. Angland: Just a——

The Court: He answered the question; let it stand.

Q. Did you tell Mr. Apperson about getting as much as he possibly can out of Mr. Schneider?

A. No, sir.

Q. Did you? A. No, sir.

Mr. Leibowitz: All right, that is all.

Mr. Lamb: That is all, Mr. Matthews. Thank you. Call Mr. Leonard.

The Court: We will have to give the reporter a few minutes. (4:40 p.m.)

(Testimony of John J. Matthews.)

(Court resumed, pursuant to recess, at 4:45 o'clock p.m., at which time the jury, defendant, and all counsel were present.)

The Court: Personally, gentlemen, I think this reporter has had enough work today. We will suspend now.

(Whereupon the Court admonished the jury.)

The Court: Court is adjourned until tomorrow morning at 10:00 o'clock. (4:47 p.m., December 14, 1949.) [289]

Court resumed, pursuant to adjournment, at 10:00 o'clock a.m. on December 15, 1949, at which time the jury, defendant, and all counsel were present.

The Court: Gentlemen, are you ready to proceed?

Mr. Lamb: The Government is ready, your Honor.

The Court: Call your next witness.

Mr. Lamb: Yesterday Lieutenant Fenton was requested by defense counsel to secure further information. I have Lieutenant Fenton if you care to examine him.

The Court: What was that?

Mr. Lamb: Request was made by defense counsel and I have Lieutenant Fenton available.

The Court: Very well, do you want to question him about this?

Mr. Leibowitz: Yes, your Honor.

LT. ALBERT J. FENTON

resumed the stand and testified as follows:

Cross-Examination

(Continued)

By Mr. Leibowitz:

Q. Lieutenant Fenton, have you made a search pursuant to the request made to you?

A. I have.

Q. And what have you found?

A. Specifically what do you want

Q. Well, whatever you did find? [290]

A. I found that tolls for that particular call was not paid for by the Government.

Q. Did you find who made the call?

A. And I found that the call was made as stated on the toll ticket.

Q. By Mr. Apperson, Lieutenant Apperson?

A. That is correct.

Q. Did you find from what number the call came from?

A. Yes, it was as stated, 224 on the toll ticket.

Q. There is no record in your office of a call coming to you from 9597, is there, Great Falls?

A. No, sir, there is not.

Q. And that call made on that date is when?

A. Sir?

Q. Do you recall the date when it was made?

A. 16th of November, 1948.

Q. It is the only record of a call made on the 16th from your office?

A. Sir?

(Testimony of Lt. Albert J. Fenton.)

Q. That is the only record of a call?

A. No, sir. We have many records of calls on that date. That is the only one that applies to Lieutenant Apperson.

Q. None on November 15th? A. No, sir.

Mr. Leibowitz: All right, that is all.

Mr. Lamb: Now if the Lieutenant may be excused; he has duties at the Airbase?

The Court: Very well. [291]

The Court: How about that slip? Have you offered it?

Mr. Lamb: Yes, I offered it on two or three different occasions. At this time I offer Exhibit No. 11.

Mr. Leibowitz: May we have that letter from New York introduced, too?

The Court: I don't know what that letter has to do with the case. It must refer to somebody else or some other person. It certainly doesn't have reference to this call.

Mr. Leibowitz: All I can say is I got the letter from the New York Telephone Company, and whatever it is worth it may be submitted to the jury.

The Court: It may be admitted.

Mr. Lamb: Your Honor, the Government has objected to the introduction of that particular letter on the grounds the proper foundation has not been laid.

The Court: I overlooked the reason. I will not admit it. I will overrule the objection.

(Testimony of Lt. Albert J. Fenton.)

Mr. Leibowitz: All right, I will take an exception.

The Court: What is this?

Mr. Lamb: Plaintiff's Exhibit No. 11.

The Court: That may be admitted in evidence.

(Whereupon said Plaintiff's Exhibit No. 11, offered and received in evidence, is a part of this record.) [292]

ROBERT M. LEONARD

was called as a witness for plaintiff, and having been previously sworn, testified as follows:

Direct Examination

By Mr. Lamb:

Q. State your name, please.

A. Robert M. Leonard.

Q. What official position do you occupy with the United States Government?

A. I am a special agent with the Federal Bureau of Investigation.

Q. And where are you stationed?

A. In Butte.

Q. And how long have you been engaged as a special agent of the Federal Bureau of Investigation?

A. Since May of 1947.

Q. And in November, 1948, were you called to the city of Great Falls in the performance of your duties of Federal Bureau of Investigation agent?

(Testimony of Robert M. Leonard.)

A. I was.

Q. And particularly on November 24th, 1948, did you have occasion to go to the Great Falls Airbase adjacent to the city of Great Falls?

A. I did.

Q. And did you go to a freight car appearing there for the purpose of unloading and taking an inventory of its contents? A. I did.

Q. I will show you an instrument which has been marked Plaintiff's Exhibit 14 and ask you if you have seen this [293] instrument before?

A. Yes, I made this out.

Q. And where and what date?

A. That was on the 24th of November, 1948, at the Airbase here at Great Falls.

Q. Does that paper relate to the materials contained in the box car at that time?

A. Yes, this is a——

The Court: You mean, of course, the Army Airbase?

A. Yes.

The Court: You spoke of the Airbase; there is more than one base.

Q. Yes, Great Falls Army Airbase?

A. Yes. This is a list of the boxes, cartons and so forth that we removed from the boxcar and placed back into the——

Mr. Leibowith: I object to that. He was asked if he took a record and not what he removed from the car.

(Testimony of Robert M. Leonard.)

The Court: Very well, sustain the objection.

Q. And this Plaintiff's Exhibit 14 is in your handwriting? A. It is.

Q. And at the time you went to the Great Falls Army Airbase adjacent to the city of Great Falls what did you and others do as far as the loading or unloading of the box car?

Mr. Leibowitz: Let's have the date first. [294]

Mr. Lamb: The date is already in, November 24th.

Mr. Leibowitz: The 24th—Your Honor, I object to that as not binding and not relevant and not material; what happened later on.

The Court: Just a minute. I see a point, I think, and I think you ought to show there hasn't been any change in that material and stuff loaded there from the time it was loaded until the time of his inspection and taking a list of it. There is quite a lapse of a good many hours, and I think that ought to be accounted for in some way, show there was a guard there or other changes made or had occurred.

Mr. Lamb: Your Honor, I might state that the inventory as shown on the turn-in slips——

The Court: What is that?

Mr. Lamb: There is an inventory in evidence of the turn-in slips of the articles that went into the boxcar.

The Court: Yes, that is in evidence. That shows what was put in there and loaded under the defendant's direction. That is the testimony.

(Testimony of Robert M. Leonard.)

Mr. Lamb: And this witness is prepared to testify what came out of the boxcar.

The Court: Well, if more came out or less came out than shown by the inventory that went into it, how are you going to account for it? Is it a fact that list shows less came out than went in or more came out? [295]

Mr. Lamb: Same amount.

The Court: Same amount. You have got it both ways, you have got it by the slip allegedly made by the defendant and the actual unloading.

Mr. Lamb: I will offer Plaintiff's Exhibit 14 in evidence at this time.

Mr. Leibowitz: I object to it on the ground not a proper foundation has been laid. There is no proof what happened in between the loading of the car and unloading.

The Court: Sustain the objection.

Mr. Lamb: You may cross-examine.

Cross-Examination

By Mr. Leibowitz:

Q. Mr. Leonard, you say you are connected with the F.B.I. out of Butte? A. That is so.

Q. And you were called into the case when?

A. On the afternoon of November 22nd.

Q. And you were called in by whom?

A. By whom?

Q. By whom?

(Testimony of Robert M. Leonard.)

A. I was assigned by the Special Agent in charge of personnel.

Q. Who?

A. Special Agent in Charge, Guy W. Bannister of the F.B.I. office in Butte. [296]

Q. And he asked you to go down to Great Falls and see Mr. Matthews, did he, and then did he tell you to go down to the Great Falls Airbase?

A. I am sorry I don't understand your question.

Q. I asked you if—what is his name again—Mr. Bannister, did you say? A. Yes.

Q. Assigned you to go down to see Mr. Matthews first or did he tell you to go down to the Great Falls Airbase?

A. I was to report to the residence agency here in Great Falls.

Q. And that was Mr. Matthews who was in charge?

A. No, at that time there was nobody particularly in charge of a residence agency. There's certain men work as residence agents, but nobody was in charge especially.

Q. Well, when you had the assignment you knew you were coming here for some specific purpose, didn't you?

A. Not specifically. I had been assigned to a case.

Q. Did Mr. Bannister tell you that a crime has been committed or is going to be committed or something is going to happen here and you should go

(Testimony of Robert M. Leonard.)

down to Great Falls to cooperate with the F.B.I. here; is that what he told you? A. No.

Q. Did Mr. Bannister tell you to come down here to lock somebody up? A. No.

Q. Well then, you came to Great Falls, didn't you? A. Yes. [297]

Q. And where did you go?

A. To the residence agency here.

Q. After you got here did you talk with any man connected with the F.B.I. after you came here?

A. Yes, I did.

Q. Did you talk to Mr. Matthews? A. Yes.

Q. Did you talk to anybody else in connection with the Schneider case? A. Yes, I came up.

Q. Now we are talking about the 22nd of November? A. Yes.

Q. Now after you consulted with Mr. Matthews did Mr. Matthews make any particular assignment for you or were you on your own?

A. It was rather a mutual venture. There was no specific assignment that he gave me, no, sir.

Q. Well, did he tell you anything about the Schneider case? A. Yes.

Q. He told you what was being planned, didn't he? A. Yes.

Q. Well, let us have your conversation; what did he tell you about this plan? A. Pardon.

Q. Tell us what he told you about the plan with reference to Meyer Schneider?

(Testimony of Robert M. Leonard.)

A. He stated that he had received information to the effect that Meyer Schneider had—— [298]

Q. I just wanted to know what the plans were that you arranged with Mr. Matthews?

Mr. Angland: Just a minute. Your Honor, he asked a question. The last question asked was a direct inquiry of this witness. The witness is entitled to give him a response to that question, and if the reporter will ask the preceding question that the witness started to answer, I think he should be given an opportunity to answer that question.

The Court: He should.

Mr. Leibowitz: I am giving him the opportunity; I just don't want to confuse him.

The Court: Let the reporter read the question.

(Question read.)

Q. Tell us what he told you about the plan with reference to Meyer Schneider?

Mr. Leibowitz: Now about the plan; no more. Now that is the question.

A. He stated that the case involved a reported offer of a bribe.

Mr. Leibowitz: I haven't asked you that, Mr. Leonard. I move to strike it out.

Mr. Angland: He asked about the plan, your Honor.

The Court: All right, that is the plan. This is preliminary or introductory to it and something would have to be said about that, wouldn't it? Go ahead and tell it. [299]

(Testimony of Robert M. Leonard.)

A. He said that a complaint had been received relative to a bribe that had been offered on the Army Airbase to an officer in charge of salvage. He stated that——

Mr. Leibowitz: Well, of course, I object to all that as not responsive to my question, your Honor.

The Court: You are asking for the plan.

Mr. Leibowitz: That is not the plan so far as I can see so far.

The Court: Well, it looks like it to me.

A. He stated that the officer involved had reported the bribe or the offer of the bribe and that the support of the—and with the knowledge of the Army officials that the officer was going to accede to any request or plans that were made in relation to such offer by Meyer Schneider. We had to make several plans. We did not know, of course, what the action would take place, and it was something of which I had very little knowledge and Mr. Matthews had very little concerning what would actually take place, so our plans were laid with several contingencies. We thought that possibly that if a bribe was to be passed, it would be passed on the Army Airbase, in which case there was not much that we could do to gain any direct evidence; in other words, that we could see or hear anything that would take place if such a contingency come to pass. On the other hand, we thought that should the bribe be made, money passed enroute from the Airbase to [300] town. We had received word from

(Testimony of Robert M. Leonard.)

the Lieutenant, Mr. Matthews, had the previous evening that they might come to dinner in town. I believe Mr. Schneider had invited him to dinner and he thought he would accede to that invitation. The second possibility then was that money would be passed, if it was to be passed, enroute from the Airbase to town. Now we thought it likely that they would come in the Lieutenant's car. He had a car available and that seemed the likely form of transportation. So we planned that when that car left the Base we would follow it if Meyer Schneider was accompanying the Lieutenant, Apperson, the officer involved. The other plan, the third contingency that was worked out tentatively—it was all on a highly tentative basis—was that it might be passed in a bar or a restaurant. We thought that probably these two gentlemen were going to a bar and then to a restaurant, in which case we thought that we could probably surveil the persons close enough that we could either see the actual passing of the money or hear the conversation leading up to it, maybe both. Another possibility that existed was that it would be passed in the hotel room of Mr. Schneider and that we could surveil to a certain point and beyond that we could not. Those roughly were the plans that were made in the preliminary discussions between myself and Mr. Matthews.

Q. That was on the 22nd you formulated these plans?

(Testimony of Robert M. Leonard.)

A. Well, it was on the 22nd and maybe into the morning of [301] the 23rd.

Q. Now of course all your plans depended on one thing, that the merchandise would be loaded on the car, is that so?

A. No, I don't believe absolutely necessary if the bribe money passed, if a bribe passed.

Q. Did you take into consideration the fact Mr. Schneider would not pass money without having the merchandise delivered and put on board a car?

A. We took into consideration affirmatively the possibility that such would be the case. We did not think it likely, however, that was a contingency we looked forward to.

Q. That Mr. Schneider would pay even though he would not get possession of any merchandise or any merchandise would be placed?

A. We thought of that possibility, yes, and our plans were flexible enough to take that into consideration.

Q. And if that happened, then what if no merchandise were put on the car and Mr. Schneider gave Apperson some money, then what would you or what was the plan if that contingency occurred?

A. The plan was that we should do as we did. The actual bribery was the offense that we would act on.

Q. I asked you the question and you stated before that you took into consideration that money may be passed by Schneider to Lieutenant Apperson

(Testimony of Robert M. Leonard.)

without any merchandise [302] being put on the car and I then followed and asked you would you have done then if that would take place?

A. Well, I think your question was——

Q. Well, that is my question.

Mr. Angland: Just a minute. We submit, your Honor, that the witness is entitled to state his understanding of the question that he is giving a response to.

The Court: Well, did you understand the question, Mr. Leonard?

A. Well, my point is, your Honor——

The Court: The question is did you understand it?

A. That I didn't understand whether he was referring to what had been done or what our plan was should this contingency come to pass. That is the question in my mind. Now which one of those is the question?

The Court: That contingency didn't come to pass, did it?

A. No.

The Court: I don't see why we should talk about it or what right you have to investigate when the contingency didn't come to pass.

Mr. Leibowitz: I asked about the plan and he said that contingency came in their plans and I wanted to find out.

(Testimony of Robert M. Leonard.)

The Court: If you understand his inquiry, you may answer it. [303]

A. Our plans didn't go so far as to detail any definite action. We did not know. It was so indefinite that while we thought of those contingencies we didn't necessarily make answers to them.

Q. That is your best answer?

Mr. Lamb: That is what he has given you.

Q. That is your answer, is it?

A. That is my answer, yes.

Q. Did you also take into consideration that should the merchandise be loaded and paid for by Mr. Schneider then what would have happened? Let us assume that the merchandise from 1045, warehouse 1045, was loaded and Mr. Schneider attempted to pay for the merchandise, did you take that into consideration?

Mr. Angland: Just a minute. That question is objected to as being ridiculous.

The Court: It is not based on the facts of this case at all.

Mr. Leibowitz: I am trying to find out. Maybe Mr. Schneider paid for it or wanted to pay for it. I don't know.

The Court: Well, it is in evidence what occurred. You know that. We all heard it.

Mr. Angland: This officer isn't called upon to state what he might do if the law is complied with; of course, [304] he would go about his business and do his job.

(Testimony of Robert M. Leonard.)

The Court: It is going into the realm of speculation.

Q. Mr. Leonard, on the 21st day of September you were stationed at the Airbase?

A. I was present.

Q. Were you present at the time the stuff was being loaded? A. I couldn't testify to that.

Q. I asked you if you were there at the time the stuff was being loaded?

A. I don't know. From personal knowledge when it was loaded?

Q. All right, did you see a car there?

A. Yes.

Q. And from where did you see it?

A. From an automobile driving past it from 25, 30 yards away, maybe.

Q. Did you stop there? A. No.

Q. And, of course, you didn't know that car had any association with the Schneider case at all, did you?

A. I was told. I did not know from personal knowledge.

Q. Did you see, do you know where warehouse 1045 is?

A. I wouldn't be able to find it, no.

Q. Did you see warehouse 1045? A. Yes.

Q. Did you see any stuff going out of 1045?

A. No.

Q. Did you see any trucks being driven from 1045? A. No.

(Testimony of Robert M. Leonard.)

Q. Wait a minute. Towards the railroad? [305]

A. I didn't see any truck near 1045.

Q. So as far as you can say there is nothing you know about the merchandise being put on the car from 1045 warehouse into the car, do you?

A. No.

Mr. Leibowitz: That is all.

Mr. Lamb: That is all.

ROBERT ZIEGLER

was called as a witness for plaintiff, and having been duly sworn, testified as follows:

Direct Examination

By Mr. Lamb:

Q. Your name is Robert Ziegler?

A. Robert Ziegler, yes.

Q. And what is your business, Mr. Ziegler?

A. I work for the Milwaukee Railroad as a clerk.

Q. As a clerk? A. Yes.

Q. And are you the official custodian of the records pertaining to freight cars that may be ordered and shipped and so forth? A. I am.

Q. Do you have those records with reference to a freight car spotted upon the great Falls Army Airbase adjacent to the city of Great Falls on the 23rd day of November, 1948? A. I do.

Q. Mr. Ziegler, I will show you a group of three papers [306] marked Plaintiff's Exhibit 15, and ask

(Testimony of Robert Ziegler.)

you if those pertain to the freight car which was spotted by your railroad company at the Great Falls Army Airbase on November 23, 1948?

A. Yes, they do.

Q. And do these instruments reflect the consignee of the car and the other details pertaining to the records?

Mr. Leibowitz: I object to the question as being leading. Mr. Eickemeyer: If the Court please——

Mr. Lamb: Will you wait until I finish my question?

Mr. Leibowitz: I am just telling you it is a leading question.

Mr. Lamb: If you will please wait until I finish the question; there are a few courtesies even in Montana.

Mr. Leibowitz: I see. In New York City——

The Court: I don't want to hear any more. Just stop right here. Or you either, if you are referring to that.

Mr. Eickemeyer: No, I am referring to the remarks of counsel.

The Court: I don't want you to make any reference to it.

Mr. Eickemeyer: We take an exception to it.

The Court: Very well, you will take the exception and sit down.

By Mr Lamb:

Q. Mr. Ziegler, do the records contained in Plaintiff's [307] Exhibit 15 contain all the records

(Testimony of Robert Ziegler.)

pertaining to the boxcar in question showing the consignee, destination and date of shipment of the car?

Mr. Leibowitz: I object to the question as being leading. I think it is for the witness to state what that document states and not for Mr. Lamb to tell him what it states.

The Court: Well, you can put in "whether or not." I will sustain the objection. You can ask the question "whether or not." See if he will object to that.

Q. Whether or not do the records here contain all of the information which your railroad has concerning the consignee, the destination, the date of spotting, and the number of the car, and the place to which it is shipped?

A. They do.

Mr. Lamb: At this time we will offer in evidence Plaintiff's Exhibit 15.

Mr. Leibowitz: No objection.

The Court: It may be received in evidence.

(Whereupon said Plaintiff's Exhibit No. 15, offered and received in evidence, is a part of this record.)

(Whereupon Mr. Lamb read Plaintiffs' Exhibit No. 15 to the jury.)

By Mr. Lamb:

Q. Mr. Ziegler, referring to this last page, what is [308] the instrument of which this is a copy?

(Testimony of Robert Ziegler.)

A. That is a copy of a waybill made that goes with the car in transit that the car moves on.

Q. The original waybill goes with the car in the possession of the conductor of the freight train?

A. That is right.

Q. And this is the record which at the point of shipment is maintained by your railroad company?

A. That is right.

Q. And what do the initials B & M stand for?

A. Boston & Maine.

Q. And the number appearing thereon is what number, adjacent to the B & M?

A. That is the number of the car itself.

Q. Just like a license number?

A. That is right.

Q. And the B & M means Boston and Maine and does that mean it is a Boston & Maine freight car?

A. That is right.

Mr. Lamb: You may cross-examine.

Cross-Examination

By Mr. Leibowitz:

Q. Mr. Ziegler, before your railroad would be permitted to send a car up to the Airbase some confirmation was necessary from some officials at the Airbase, is that so?

A. That is right. [309]

Q. In other words, you couldn't send anything insofar as a car is concerned unless you had the absolute authority from some office in charge at the Airbase?

A. That is right.

(Testimony of Robert Ziegler.)

Q. So that when the car did come out it came out because you were authorized to send the car out?

A. That is right.

Q. And whatever information appeared with reference to the use of it, of course, and the contents that may be loaded on that car came from some official from the Government? A. It did.

Q. Now that car had a capacity for how many pounds?

A. Well, I don't know for sure. I couldn't say because that varies on all cars.

Q. Is there anything from this exhibit here that could give us some idea?

A. Nothing indicated, no.

Q. Do you know whether a request had been made for a small car or a large car or what type car?

A. Forty-foot was specified.

Q. And that would carry how many pounds?

A. They vary, 80,000 and 40,000, and——

Q. Depending upon the type merchandise and the bulk? A. That is right.

Q. Now when it says here "consigned to M. Schneider Company," that information came to you from some, or it was complete from some official at the Airbase?

A. Are you speaking of the car order or the bill of [310] lading?

A. Well, whatever you have here. I don't know which.

(Testimony of Robert Ziegler.)

A. This one was given to me by the officer at the Airbase.

Q. And the bill of lading?

A. That was presented to our office by an officer from the Airbase.

Q. And of course you wouldn't know whether M. Schneider or M. Schneider Company is in charge of that particular stuff, would you?

A. I don't know either way.

Q. Now on the last page of the exhibit there is a date, November 27, 1948. Can you tell us from that last page how many pounds had actually been put on that car? Is that it here?

A. That is the actual weight, 16,000.

Q. Actual weight of the stuff in there?

A. That is right.

Q. 16,015?

A. As given to us on the bill of lading.

Q. Of course, you didn't check that, did you?

A. No, we didn't.

Q. And your company doesn't check that?

A. No, we don't.

Q. And you don't know whether 16,015 actually were in the car or not? A. No. [311]

Q. There may have been less?

A. I have no way of telling.

Q. And there may have been more. Now when it says "rags" you assumed it was rags, or do you check it or does the company check it in any way?

A. No, we do not.

(Testimony of Robert Ziegler.)

Q. You accept it as such? A. Yes.

Q. Do you assume it will be checked by some officer at the Airbase as to correct details here?

A. As to the contents.

Q. As to the contents?

A. Yes, that is right.

Q. Of course, you don't question what the officials of the Airbase tell you as to the contents?

A. That is right.

Q. And they told you that November 22, 1948?

A. That is right on the car order there.

Q. Yes. I don't want to mislead you.

A. That is right.

Q. And is that right then here? A. Yes.

Q. And is that the end? A. Yes.

Q. Now after you received the order can you tell us from anything here when the car arrived at the Airbase?

A. It's the date at the righthand side. That 8:00 a.m. doesn't mean——

Q. 11/23? A. That is the date.

Q. And did you say something about the hour? [312]

A. That 8:00 a.m. is used on any car started after 7:00 a.m., as that is the start of the day.

Q. It may be 4:00 o'clock, 3:00 o'clock, 2:00 o'clock and still you would mark it as 8:00 o'clock?

A. That is right.

The Court: What date?

Mr. Leibowitz: 23rd.

(Testimony of Robert Ziegler.)

Q. Now is your company through as far as its duties and functions with reference to the delivery of the car just as soon as it brings the car to the Airbase?

A. You mean as far as filling a car order?

Q. Filling the car order? A. That is right.

Q. Your man isn't there to see whatever stuff goes in there?

A. No, there is no one there from the railroad.

Q. Until the car is actually shipped from the Base back to New York City in accordance with the order here you don't know just what came into the car and what went off the car, whether they put on 40,000 pounds of cotton stuff or they tried to comply with the regulations, do you?

A. No, I have no idea.

Q. Would anybody from your company know?

A. To my knowledge none were present.

Q. Now on the 23rd of November after the car had been brought to the Base and the stuff loaded did your company [313] make inquiries as to the removal of that car to New York City?

A. No, we never make any inquiries as to the readiness of the car.

Q. You don't know anything whether it stays there a year or half a year?

A. We would question it if it was any indefinite time, figuring there might be an error on our part.

Q. So an inquiry would be made by you people?

A. Yes.

(Testimony of Robert Ziegler.)

Q. Did you make inquiry in this case?

A. No, we didn't because there wasn't any length of time involved.

Q. That car didn't go out on the 23rd of November, did it?

A. I can't say as to that. You mean to the Airbase?

Q. From the Airbase? A. I couldn't say.

Q. Is there anything on this paper that would indicate when it went out?

A. Not when it was pulled from the Base, there is nothing there.

Q. Well, let me show you the last page of the exhibit and ask you what this November 27th means?

A. That is the day the car was billed at our freight office.

Q. Which means what? [314]

A. Which means it was billed on that day. It could have been pulled from the Base the day before or day after.

Q. Could it have been pulled from the Base November 23rd?

A. I couldn't say until I check the records.

Q. Well, the only time that you would put the amount right here is when this information came to you that the car had already been what?

A. That bill of lading you have in your hand is presented to us and that means the car is ready to move.

Q. And what date is on that billing?

(Testimony of Robert Ziegler.)

A. November 26th.

Q. Now when that bill of lading on the 25th of November was presented to you did you make any inquiries the reason why the car was ordered on the 23rd and not removed until the 26th?

A. We received a call prior to that date not to remove it until we got orders to remove it.

Q. Was it an F.B.I. order, as far as the car?

A. As far as the moving of the car.

Q. And you complied with the instructions of the Federal Bureau of Investigation? A. Right.

Q. And if you were asked by the consignor, Mr. Schneider, that you remove the car on the 23rd day of November, you wouldn't under any circumstances remove it? [315] A. We would not.

Q. And on the 26th of November, 1948, when the car was actually removed it was removed pursuant to the instructions of the Federal Bureau of Investigation? A. That is right.

Q. There was no demurrage here, was there?

A. No, there was no demurrage charged to the car.

Q. And the reason there was no demurrage was because the F.B.I. put its hand on it, otherwise there would have been demurrage?

A. If it had not been released on that date, there would have been.

Mr. Leibowitz: That is all.

(Testimony of Robert Ziegler.)

Redirect Examination

By Mr. Lamb:

Q. Mr. Ziegler, how long after a car is spotted does a shipper have to load a car in normal procedure?

A. He has 48 hours free time and beyond that there is a demurrage charge.

Q. I believe you stated to Mr. Leibowitz that when the car was removed from the Great Falls Air-base that it was pursuant to F.B.I. instructions?

A. That is right.

Q. It was moved from the Base pursuant to those instructions? [316]

A. That is right, because I called and asked if it was okay to move it after the bill of lading was presented.

Q. In other words, the F.B.I. said there is no further need to hold the car and you can move it if you want to?

A. That is right.

Q. Then they didn't instruct you to pull it from the Base?

A. No, they said it was okay to move it.

Q. When did someone from the Federal Bureau of Investigation call you and ask you to hold up removing the car from the Base?

A. I can't say as to the exact date of that.

Q. Now some questions were propounded to you concerning whether your railroad company would know of the exact weight of the commodities in the car, you recall that line of questioning?

(Testimony of Robert Ziegler.)

A. Yes, I do.

Q. After the car is loaded out at the East Base is there any place from the point that it would leave the Airbase that the railroad company, either yourself, yours or any of your connecting lines would ever inspect that car or weigh it for its contents?

A. There would be no one for that.

Q. So may we assume then that in addition to the 16,015 pounds shown upon the bill of lading there could have been in that car, as far as your railroad is concerned, [317] an additional 50,000 pounds of equipment?

A. Yes, there could have been.

Q. Now we find on the bill of lading 16,015 pounds after 24,000 pounds, can you explain that?

A. Well, although there was only 16,015 pounds in the car the rate applied onto it was a minimum of 24,000 which he had to pay regardless of the weight under 24,000.

Q. In other words, if he ordered a forty-foot freight car and put a box of matches in it, he would still have to pay for 24,000 pounds freight?

A. That varies according to the classification of the merchandise to be loaded.

Q. But if he put a couple pounds of cotton and wool rags in the car, he would still pay for 24,000 pounds as a minimum charge?

A. If you ordered it as a carload.

Q. Now I believe you stated in response to a

(Testimony of Robert Ziegler.)

question that your railroad had no further connection with the car after it was spotted, and after the car is loaded then your railroad picks it up at the Base, hauls it to a central point here in Great Falls, and then connects it with east-bound freight if that is the direction the car is routed?

A. That is right.

Q. Now can you refer to your other records and tell us the date that shipment left the city of Great Falls or left [318] the Airbase, put it that way?

A. Was November 28th a Sunday?

Q. I don't know. November 23rd was Thanksgiving; that would be Thursday.

A. The reason I say that the car appears on the yard check of the Airbase for the morning of the 27th and does not appear on the morning of the 29th, which means it was pulled on the morning of the 27th, and if the 28th was not a Sunday, which our switch engine does not work, it was pulled on the 28th.

Q. The 28th is Sunday.

A. We have no switch engine on a Sunday and so the car was pulled on the 27th from the Airbase.

Q. And do you have an records to show when it left the city of Great Falls?

A. I don't have those with me.

Mr. Lamb: That is all.

(Testimony of Robert Ziegler.)

Recross Examination

By Mr. Leibowitz:

Q. Mr. Ziegler, you say that there is no way that your company or railroads generally can check the amount of stuff that is in that car?

A. We never check the contents of a car unless there [319] is doubt as to what is in it.

Q. Now if there is any question in the minds of the railroad company as to whether or not that car had been overloaded and is not paid for, you have a way of checking the weights, haven't you?

A. We would have no reason to see where it was paid for.

Q. I didn't say that. I didn't ask you that. In other words, let's assume as in this case or in any case 16,000 pounds of stuff was stated to you people as gone into that car and actually 100,000 pounds went in and the car began to move and went toward Chicago and even beyond Chicago, before it ever reached New York, do you mean to say that your company or any railroad would not be able to determine how much poundage went into that car?

A. There would be no way of telling.

Q. That is, you don't know if there is a way, do you?

A. Well, I have worked a long time and I have never found one yet.

Q. Don't you know that there is a railroad, an agency that could check that car enroute anywhere

(Testimony of Robert Ziegler.)

along the line at any time they see fit if there was any question as to the weight or contents of the car?

A. If there is any question, yes.

Q. Then there is a way of doing it? All you have to do is tell them that that car should be checked and they [320] will check it.

A. If I would tell them that they would, yes.

Q. That is what I wanted to know; it could be checked?

A. If it was wanted, ordered to be checked.

Q. That is what I wanted; if it was ordered to be checked naturally it could be checked?

A. It could be by the W. W. I. B.

Q. Now we have got something. Now will you explain what the W. W. I. B. means?

A. That is the Western Weighing and Inspection Bureau.

Q. And they will check it for you?

A. If we request it.

Q. Did you request it in this case?

A. We had no need to request it.

Q. Why? A. There was no question.

Q. Because there was no question how much stuff went into that car, is that so? A. Right.

Q. In other words, 16,000 pounds of stuff went into that car and 16,000 pounds were delivered right through to New York City?

A. That I don't know.

Q. Well, it didn't pick up any weight, as far as you know, when it went along?

(Testimony of Robert Ziegler.)

A. I don't know.

Q. Was the car sealed?

A. I have no way of seeing the car after it leaves here.

Q. But they seal the car after it leaves here? [321]

A. That is right.

Q. How can it be opened up again?

A. Those can be easily broken.

Q. By theft?

Mr. Angland: Just a minute. Your Honor, the Court knows a shipment can be stopped in transit or partially unloaded; many arrangements can be made on a shipment. You are trying to propound the idea it has to go through with the seal to New York; he isn't stating that.

The Court: Yes.

Q. Mr. Ziegler, when a shipment of 16,000 pounds is made and it is a 24,000 carload price being charged, that car is supposed to remain sealed and locked for all purposes until it reaches the destination in New York City? A. That is right.

Q. And as far as you know that is the way it went through, isn't it?

A. I have no knowledge.

Q. Well, there was no complaint to your company? A. Not as to which?

Q. Well, as to the amount that was in it?

A. No.

Mr. Leibowitz: That is all.

(Testimony of Robert Ziegler.)

Mr. Lamb: That is all. . .

Mr. Lamb: Those are permanent records of the railroad company.

Mr. Leibowitz: I have no objection to taking them [322] out. I don't think it is much so far as I am concerned and we have got the stuff we have questioned in on record.

Mr. Angland: This case is going to require a record; shouldn't the record be complete, your Honor?

The Court: It is a record of the evidence here; it should remain here. To accommodate you might stipulate.

Mr. Eickemeyer: Copies could be substituted.

The Court: Let copies be substituted and then the original documents may go back.

Mr. Lamb: Then will defense counsel stipulate that upon the conclusion of this particular trial that Mr. Ziegler may have the original records for the purpose of making a substitution thereof, making photostats thereof and then substituting the photostats for the original documents which are now in court.

Mr. Leibowitz: Very good. Very well.

Mr. Lamb: You are so stipulating?

Mr. Leibowitz: Yes.

The Court: Very well.

Mr. Leibowitz: Let the record show we reached that arrangement.

Mr. Lamb: At this time the Government rests. [323]

Mr. Emigh: May it please your Honor, at this time the defendant first——

The Court: Do you want to make a statement?

Mr. Emigh: No, your Honor, I wish to make a motion; before that, I would ask the Government to indicate the portion of Plaintiff's Exhibit 1 which is being offered in evidence in this case. It is a very large document, involves a great many things, and as I understand it there are just a few pages they rely upon.

Mr. Lamb: We rely upon the whole manual.

Mr. Emigh: We would like the Court to make some order limiting this exhibit to the portions that counsel deems of moment to the Government's case in order that the Court may not be unduly burdened with this voluminous stuff and a burden put upon the Court trying to find out what particular matter pertains to this case.

The Court: I don't know that there is any necessity of this particular exhibit—what exhibit is it, Exhibit 1?

Mr. Emigh: This is Exhibit 1 and has some very important matter in it, but as I understand it the Government already read from six pages, and there might be other important regulations in connection with what they read from and it is in evidence and we have no objection to its staying, but, as I say, there are several hundred pages that have nothing to do [324] with this case.

Mr. Lamb: Your Honor, in this particular case Exhibit 1 is the United States Air Force Operating Manual. The original sheets and the testimony thereon does give some information, or would give information to the Court as to the authenticity of the information contained therein, and the whole exhibit has been offered in evidence and as far as any record or any future action of the Court or any other court the original instrument itself could go as an original exhibit, and I prefer at this time not to pull the exhibit apart and that it remains in the files as it was admitted in evidence.

Mr. Emigh: We will ask then that counsel be required to designate, if this manual is to remain in the record, designate the portion thereof they deem applicable to this case for the convenience of this Court and possible reviewing court and counsel and everybody involved. There's hundreds of pages here I am quite sure from counsel's statement today and cursory examination it can do nothing but encumber the record. We have no objection to this remaining in this form if——

The Court: It does not encumber the record so much, Mr. Emigh. If it is admitted and received in that form, it doesn't have to be copied by anybody or anything of that sort, but if it is introduced in that form and this case is some other place sometime you might want to see that manual and [325] look it through and see what you find in it. We don't know what or how much may be made of it or what will come out of it or what the future of this

case will be. You might want to use that manual itself. It was introduced in its entirety, any part of it later on and we don't know what question might arise you would want to look up.

Mr. Emigh: Well, I can't imagine the jury reading seven or eight hundred pages to find out what this case is about.

The Court: Well, the jury don't have to read seven or eight hundred pages; if they want to look at it, they can. If someone in the jury room questions the manual, they can look it up in the manual and look in the index.

Mr. Leibowitz: Of course, the point is we don't know what the Government is relying on for its case, and they put the burden on us to go through this record to find out. There may be something important and I don't think we ought to have this obligation.

The Court: Of course, if this case goes elsewhere sometime, we will have a transcript and by reading that transcript you can find out what the Government relied upon in the manual.

Mr. Leibowitz: We should have known before we even went to trial what they were relying upon; that is why we have an indictment. [326]

The Court: Well, you have a transcript to rely upon which is sufficient.

Mr. Leibowitz: We will take an exception.

The Court: I will let the record stand as it is.

Mr. Emigh: Your Honor, the motion which I anticipated is in written form and we will file it in that form and ask to present our argument on it.

The Court: Well, you can do that in the absence of the jury.

The Court: So we have a motion, ladies and gentlemen of the jury, involving some law questions and it may relate to the facts and you should be outside when they are arguing this matter. So you may retire and the Marshal will find a convenient place for you and call you back when we are ready to go on.

The Court: We will take a recess for fifteen minutes. (11:10 a.m.)

(Court resumed, pursuant to recess, at 11:30 a.m., at which time the defendant and all counsel were present. The jury was not present.)

The Court: Mr. Emigh, I will hear your argument.

Mr. Lamb: Your Honor, do you want to excuse the jury at this time?

The Court: Oh, yes, we might as well excuse the jury until two o'clock. Bring them in, though.

(The jury was present.)

The Court: Ladies and Gentlemen of the jury, we haven't entered upon our argument here yet, so I am going to excuse you at this time until two o'clock this afternoon, and you remember the admonition of the Court, don't talk to anyone or let anybody talk with you about the case or discuss it among yourselves or form or express any opinion as

to the guilt or innocence of the defendant until the case is finally submitted to you. Don't let anybody talk to you and if anybody speaks to you, remind them you are a juror, and if they insist upon it, report it to the Marshal of the court. You are excused until two o'clock this afternoon.

(The jury retired from the court room.)

The Court: Well, gentlemen, I will give you twenty minutes on the side for argument of this motion if you need that much time.

Mr. Emigh: May I be permitted to address the Court from a little closer position?

The Court: Did you hear what I said just now?

Mr. Emigh: Sir?

The Court: Did you hear what I said just now?

Mr. Emigh: No, I didn't.

The Court: Well, I said I will give you twenty minutes on a side if you need that much time.

Mr. Emigh: Well, I think I can present this, or we can. [328]

The Court: You will have to be brief about it because I have looked into it carefully, anticipating you would make this motion, so I think twenty minutes on the side would be sufficient.

Mr. Emigh: Yes, I agree with the Court on that. I just wanted to explain to the Court that while the Court may not hear me I cannot hear without my amplifier, and if I speak with my amplifier on, I drown out my own voice.

The Court: Well, there are times when you amplify considerably.

Mr. Emigh: May it please the Court, at this time the defendant has made a written motion, which the Court has, for a judgment of acquittal. And this motion first is based on the grounds that there is not sufficient evidence to warrant the conviction of the defendant or to establish a *prima facie* case in behalf of plaintiff. In this regard, you Honor, the indictment charges in both counts similarly; in one as to the promising or offering of a bribe, and the other as to the giving of a bribe. That the act was committed, first, with the intent to influence the decision and action of Harvey B. Apperson in his official capacity and function in a certain matter then pending before him in his official capacity, as the defendant well knew.

Now we submit that the record discloses, plaintiff's case discloses that there was no matter pending before [329] the officer in his official capacity in relation to which the evidence applies. Had this offer, alleged offer, been made and the bribe passed in some relation in connection with this bid that had been made herein, the officer, whether acting as an officer or a person, was acting in his official capacity, the matter would have come squarely under the statute and squarely under the presumed intents of the indictment. That is, possible presumptions. We still maintain that the indictment is insufficient, of course. In that respect there was a matter pending in his official capacity. He had authority to receive these bids. He had authority to determine the sufficiency of the bids, and if that

money had been offered and passed for the purpose to induce him to receive a lesser bid than the one made, then I say it would come squarely under the statute.

But here the evidence discloses the situation that there was no matter pending before that officer until that officer made a situation by handing out to the defendant the exhibit containing certain salvage articles, not scrap, salvage articles, and indicating certain things there. Now there was no matter pending in his official capacity after that for the reason that the evidence discloses that he as an official discharging his functions and acting in an official capacity, and this is the Government's evidence, having absolutely no authority to proceed with a sale or giving away [330] or larceny of that surplus material in the manner that he proceeded in order to create the commission of a crime, and in order to encourage the commission of a crime, and in order that an apparent crime would be perpetrated. So, in his inception there was no matter pending before him in his official capacity as to this transaction in relation to the goods in warehouse 1045. So he proceeds with the aid of other Government officers, may it please the Court, to create a matter, but that matter was not pending before him in his official capacity. That matter was extra-official. The testimony shows he had no authority to consummate that matter. The evidence shows that not only did he have no authority to dispose of that matter without bids but he had no power to

proceed and deliver that property. He created not a matter pending before him in his official capacity but he created a false situation and proceeded under a false situation and induced a bribe, may it please the Court, under a false situation which as a matter of law he had no authority to consummate and he couldn't influence him in his official capacity.

The purpose of this Act, as I understand it, and it appears in a great many cases, is to prevent the corruption of officers in the performance of their official duties. Now, as I have stated, there wasn't a matter pending before him. It wasn't a matter he could consummate. The evidence shows they couldn't have sent those trucks in to take that [331] material out without getting permission from headquarters to proceed with this entrapment, may it please the Court. And in that we think that the evidence fairly shows that it is not a situation coming within the conception of the statute.

Now if he could have done anything there at all, if he could have gotten away with that bribery, if they had moved that railroad car out at night in violation of orders of the Post, it would have consummated nothing more than larceny or an embezzlement by a bailee. It wouldn't constitute a violation in respect to the Act, without they were in respect to an official capacity, but it would be just a good old garden variety of larceny as a bailee, and the defendant would not be appearing as one charged with offering a bribe to influence an officer, but had this transaction been consummated the offi-

cer and he would have been indictable, the officer as a principal and he as an aider and abettor and accomplice. But the truth of the fact is there never was any intention to do anything at all in his official capacity but to entrap this man. And I think it is a far cry to say that one of the official capacities of an officer of the United States is to entrap, to encourage the commission or apparent commission, may it please the Court, of a crime and entrap a person in commission thereof.

Further, I think the evidence is insufficient here as to the identification of the officer. They allege the power is within the Government to apprise this defendant of his [332] official capacity. He is charged with being, to use the correct language here, a First Lieutenant, United States Air Force, and Base Salvage Officer of the Great Falls United States Air Force Base, and the evidence discloses that he is, and there is an exhibit here if I can find it—I don't remember the exact wording, but it certainly does not define him or give him authority as a Base Salvage Officer. The Court in overruling our objections to the secondary evidence which was proposed to establish that he was the Base Salvage Officer of the Great Falls United States Air Force Base required that the Government let that evidence in subject to connecting that evidence up by the Government. The Government proceeded to connect that evidence up, but in doing so showed him to be another officer with another title, and we think there is a fatal variance in that respect be-

tween the proof and the allegations of the indictment.

We think that as to the facts proven here there is strong evidence of entrapment. Whether the Court determines that an entrapment was established as a matter of law or whether it is a matter for the jury, the Court will determine upon this motion; if it is a matter for the jury this motion will be well taken; if it is a matter of law, there is sufficient evidence in the mind of the Court to establish that as entrapment, then it is the power of the Court to act on this motion; I recognize that. [333]

Proceeding then with a separate—yes, your Honor, this is a statutory crime and the statute and the allegations of the indictment must be strictly construed.

The second matter is in relation to count two and in that respect the evidence, of course, is the same as it is to the count one. And, of course, in this motion, your Honor, the sufficiency of the indictment is before the Court. We did not waive that at any time and I am not going to weary the Court with argument. I think the Court has heard our arguments on that. The one thing, though, that the Court couldn't appreciate when those arguments were made was the impossibility of a defendant from those allegations to anticipate and prepare to defend the proof brought here to establish both of those allegations. And we respectfully submit to the Court that as the evidence stands in the course of the Government's case the evidence does not es-

tablish any crime which is denounced under the statute and the indictment is not sufficient to establish any crime.

Counsel has been kind enough to find me the exhibit containing the designation, and this is the legal authority; this is not somebody's conclusion or this is not secondary evidence; this is the best evidence, may it please the Court, and is controlling over the secondary evidence as to the appointment of the officer, Harvey D. Apperson, and it is found in paragraph 12 of Plaintiff's Exhibit No. 7, [334] which is as follows—now this is an order issued by Colonel Chennault, and this is the evidence they offer, paragraph 12:

“1st Lt. Harvey B. Apperson, Jr.—with his serial numbers—Headquarters and Headquarters Squadron, 517 Supply and Maintenance Group. This states, I presume—with primary duties as Group Adjutant is reld for assignment—these are abbreviations, your Honor; I am not quite familiar with them. I think that is—released for assignment—thereto and primarily therewith and assigned to 517 Supply Group, Supply Squadron, 517 Supply and Maintenance Group—this states as with primarily as Salvage Property and Disposal Officer. And with additional duties as Squadron Commander, I believe that means. 517th Supply Squadron, no travel involved, authority VOGG, CNTL, MAT, CNR, 4 August 1948.”

And we submit that does not meet the indictment. My associates may add to this motion, but we submit, your Honor, that there is insufficient indictment and insufficiency in the evidence.

Mr. Eickemeyer: Your Honor——

The Court: Well, if you want to speak a few minutes; I don't know what you can say that co-counsel hasn't already stated.

Mr. Eickemeyer: The only thing I would have to say [335] would be just a few words, your Honor, and that is this. That this officer Apperson, his capacity in the office is created by the commanding officer, and that is Chennault; he is the one that has the power of appointment, and he appointed him to the office of salvage and property disposal officer, which is not the officer that he is alleged to be in the indictment.

The Court: Proceed.

Mr. Lamb: If the Court please, I think I can wind up a little more briefly than the time limit that the Court has granted us. Of course, as counsel for the defendant has stated, most of his argument is presented toward the failure on behalf of the Government to present a *prima facie* case, and some argument was given that there was no matter pending before Lieutenant Apperson upon which this evidence introduced at this time applied. The manual, being Plaintiff's Exhibit No. 1, and the testimony given by Lieutenant Apperson, the testimony given by Sergeant Aulgur shows that the duties of Lieutenant Apperson covered the storage and han-

dling and the disposal of all usable surplus property at the Great Falls Airbase, and the matter of the proper disposal, storage and handling of usable surplus property was pending before him on the 22nd day of November and on the 23rd day of November, and for some considerable period thereafter, so there was a matter pending before Lieutenant Apperson toward which this [336] evidence directly applies.

There was some testimony, or some argument that when on the 23rd day of November the inventory of those usable items was shown to the defendant, Meyer Schneider, that there was no matter pending before Lieutenant Apperson. Of course, my previous statement that there was a matter because the very regulations which are here before the court and have been admitted in evidence, and the testimony of Lieutenant Apperson, clearly disclose his duty as salvage officer to properly store, handle, dispose of, and to make reports concerning the handling and disposal of any property that came into his hands from the Base Quartermaster Officer, and the evidence here pertained to the proposal of the defendant that that property be improperly handled and disposed of, and improper reports be made by the defendant.

The statement was made by counsel that Apperson had created a matter that was not pending before him in his official capacity and that the indictment did not cover that particular situation. On lines 26 through 32 on the first count it reads: "For the purpose and with the intent to influence the

said Harvey B. Apperson, as aforesaid, to allow and make opportunity for the commission of a fraud on the United States and to induce the said Harvey B. Apperson acting as aforesaid, as the defendant well knew, to do an act in violation of his lawful duty, as the defendant well [337] knew, in respect to the disposal of salvage property of the United States, as aforesaid.”

So we have a matter which the defendant was attempting to induce Lieutenant Apperson to take some action on and the matter was pending before him at the time of the attempt on behalf of the defendant to induce him to take some particular action. First, to permit or to allow and make an opportunity for the commission of a fraud upon the United States. That allegation is proven by the evidence that the offer was made by the defendant with the attempt to secure the cooperation of Lieutenant Apperson to permit him to remove property from the Airbase without paying for it, which would result in a fraud upon the United States, and would result in Lieutenant Apperson doing an act in violation of his lawful duty as defined by the regulations which are here before the court.

Now, of course, it is true if the transaction was consummated as attempted by the defendant that both the officer and the defendant would have been guilty because it would have been a fraud and it would have been necessary in the, in accordance with the testimony of Lieutenant Apperson on the reports he was required to make in order to cover it

up to avoid any prosecution on his own part; he would have had to alter the records or make some false reports which, of course, would have been an active violation of his duty. [338] In addition there is a specific provision in there requires him to supervise and to prevent any situations that might make opportunity for fraud upon the United States.

Now as far as the base salvage officer is concerned the orders are before the court appointing Lieutenant Apperson as salvage officer. The Adjutant General of the Great Falls Airbase testified here that there was only one salvage officer on the United States Great Falls Airbase, and the evidence is clear that he was the base salvage officer. Lieutenant Apperson testified that he was there in command and in charge of the base salvage office as shown by all of the corroborative witnesses who were here, Sergeant Aulgur, Private Walker, and everyone else who testified that Lieutenant Apperson was in charge as base salvage officer and in charge of the disposal and handling of all of the salvage property upon the Great Falls Airbase.

As far as the entrapment is concerned I believe in our judgment that the evidence is clear and distinct that Lieutenant Apperson did not induce, he did not entice, he did not persuade, he did not lure, and he did not entrap the defendant either on the 22nd day of November when he first came to the Airbase or again on the 23rd day; all affirmative action in this whole transaction was taken by the defendant himself; he created the situation and

Lieutenant Apperson merely acceded to his wishes and let him do anything he cared [339] to. The evidence is unrefuted that the removal of the property from warehouse number 1045 was done by employees of the defendant; and that they at his direction removed that property from building 1045 and put it on his freight car; and without any question that every affirmative action that was taken in the whole case was taken by the defendant himself in attempting to secure property belonging to the United States to commit a fraud upon the United States, and in an attempt to get Lieutenant Apperson to violate his lawful duties with respect to the proper handling, disposal and storage of surplus property of the Government. That is all.

Mr. Leibowitz: Now, Mr. Lamb says that a matter had been pending before him in the storage and in connection with the disposal of the merchandise. There was no way that Lieutenant Apperson could possibly dispose of that merchandise or handle it in a fashion such as has been involved here unless he had absolute raw authority without any limitation or without any accountability towards anybody. That stuff was reposing in a warehouse and it must repose there until a decision had been made by some authority to decide to sell it to the people, and the only way it could be sold is according to the rules and regulations written by bidding. Mr. Lieutenant Apperson had testified that as far as the transportation of that stuff he had no authority to transport it outside of that Base; the only place he can trans-

port it is from one warehouse [340] to another, but he certainly had no authority to take that merchandise and put it on a railroad car and send it off. He said he couldn't even make only spot sales unless he got certain permission from somebody. Mr. Lieutenant Apperson testified he couldn't do anything with the merchandise until it was actually paid for and there is no proof here there was even an attempt to pay for it. As a matter of fact, Lieutenant Apperson didn't want the man to pay for it. It might have been a different situation if he had gone into the office and paid and under paid on what it was worth. If Lieutenant Apperson had the authority, then I might say he committed a fraud on the Government because he had gotten something for which he didn't pay, but here is a case where the man had no right to start moving it unless it was done in accordance with certain specific rules and regulations, and, of course, there was no rule or regulation complied with or attempted to comply with. The very fact they had gone into General Chennault indicated they were fearful many of those things couldn't be done unless they had authority to do it, and even then General Chennault could not give them that authority; even he didn't have that power to violate these rules and regulations. It was really done for the purpose of entrapping this defendant into the commission of this crime. And I say there isn't anything in this record here which would support the conviction of the defendant, and I think [341] that the court should dismiss the indictment.

Mr. Eickemeyer: If the court please, I don't want to take much time, but I believe this is a serious point which has developed as the evidence has gone in here how serious a question the allegations of this indictment are. Now, it must be conceded that Colonel Chennault, according to the rules and regulations, is the officer who appoints Apperson. Now, under his authority he would appoint him and he appointed him to the office of salvage and property disposal officer. Now, if the court please, it is apparent to the court immediately what we are confronted with in this indictment. This indictment charges that he is a First Lieutenant of the Airbase and base salvage office, an entirely different designation. Now it may be that we are hit with this proposition in the indictment "and person." The argument we used in our motion to dismiss the indictment whether his act promised money to a certain officer, and that is designated as base salvage officer, and then the proposition comes "and person acting for and on behalf of the United States." And that is a situation we were up against to meet this, their proof, and that was the situation we were up against when, in analyzing the indictment to see what we had to meet, and now it develops that Apperson comes in here under the authority of an appointment to a different office entirely and they can't come in here now by evidence and try [342] to say his duties and functions are the same because they named him and they should know and it is specifically pleaded here that he is base salvage officer.

The Court: Well, gentlemen, I will take the matter under advisement. Court will stand in recess until two o'clock this afternoon. (12:10 p.m.) [343]

(Court resumed, pursuant to recess, at 2:00 o'clock, p.m., on December 15, 1949, at which time the defendant and all counsel were present. The jury was not present.)

The Court: Well, gentlemen, I have considered your motion you made here for judgment of acquittal. I have tried to give it fair consideration since your argument, and anticipating, of course, that you would make such a motion I have looked into the matter beforehand and I am satisfied that I would not be justified or warranted in any way in view of the evidence that has been presented in this case of granting your motion; therefore, the motion will be overruled.

Mr. Eickemeyer: May we have an exception, your Honor?

The Court: Bring in the jury.

Mr. Emigh: May I make a statement?

The Court: What is it about?

Mr. Emigh: So as not to delay the case there are two other motions; one will be a motion at the close of our case. We would rest and renew the motion that was made and should call it to the court's attention in justice to the court. Your Honor, this motion will be over in just a few minutes; it is nearly all written out.

The Court: All right, read it. You are making this as part of the motion?

Mr. Emigh: The old motion is incorporated in this [344] but the point in the new motion is, your Honor, a matter on which the authorities are rather uniform on it to be a serious matter here and that is this. It is a matter that runs to the very merits of the case and that is the only proof or authority which is contained in this exhibit relates to a First Lieutenant Harvey D. Apperson, Junior.

The Court: Now I have considered that very carefully.

Mr. Emigh: I don't think this point has been brought to your attention.

The Court: As to the point of identity of the person or officer?

Mr. Emigh: No, that is not the point. The point is they name one man in the order and another man in the indictment; to wit, names a Harvey B. Apperson. The order names Harvey D. Apperson, Jr., and we think under the rules that if that Jr. was surplusage nevertheless it is bound to be—the omission of that, or initial surplus, must be proved as alleged. That is an important point.

The Court: He is by several witnesses identified as the officer, salvage officer at that Post, and his name is given as Harvey B., and the officer who had control and custody of that document says that this is the Harvey B. Apperson at the Great Falls Airbase.

Mr. Emigh: The court gets the difference in the initial? [345]

The Court: I don't think that makes any difference. He has been positively identified by a dozen witnesses as to who he is.

Mr. Emigh: Your Honor, this motion is not before the court; may I complete the motion? The next motion is, your Honor, we are going to ask the court to withdraw count one. We have the written motion to withdraw count one as constituting a part of the transaction in count two. That is, if there is anything at all it is just one transaction.

The Court: Oh, no, that is overruled.

Mr. Emigh: I haven't made the motion.

The Court: I don't want to hear any argument on it.

Mr. Emigh: We want the opportunity to present this in form.

The Court: All right, read it off. This has been all gone over and considered before, all except this identity of the officer at the Base.

Mr. Emigh: We have that motion in form and I will just get it in the record, your Honor.

The Court: Tell me, what is this motion? What is it composed of, this new motion you are bringing up?

Mr. Emigh: That is the one I spoke to you about and I mentioned the one included at the end of the Government's case. [346]

The Court: You got another one?

Mr. Emigh: That is right. That is the one I

told you about and, that is, everything has now been discussed.

The Court: All right, the motion is overrule and denied and may go into the record. Now, there is another matter I am going to bring up with you gentlemen, you offered some instructions here and some of them I will give and some I don't intend to. And I want to call your attention to the instruction on entrapment. I am satisfied I am not justified or warranted in giving an instruction on entrapment in view of the testimony of Lieutenant Apperson and the surrounding circumstances and corroborating evidence that stands undisputed in this case. Now I have examined a good many authorities and I am satisfied there is no entrapment here; so that will go out of the case.

Mr. Emigh: This is the motion the court already overruled, I take it?

The Court: Yes, I have overruled it; if it is the motion you just stated.

Mr. Emigh: It is the motion for judgment of acquittal.

The Court: The motion for judgment of acquittal you argued before recess.

Mr. Emigh: With the exception of the changes I have told the court about.

The Court: You just told me about? [347]

Mr. Emigh: New matter.

The Court: You had a new motion here?

Mr. Emigh: Yes. And let the record show before this motion is presented that the defendant rests.

The Court: Before the motion?

Mr. Emigh: This is a renewal of the motion at the close of the defendant's case.

The Court: The defendant rests and then you are making this motion?

Mr. Emigh: Well now the motion appears subsequent to the resting of the defendant.

Mr. Leibowitz: Now referring to the refusal to charge the instruction of entrapment may we have an exception to that?

The Court: Certainly.

Mr. Emigh: And an exception to this ruling and as to the motion for judgment of acquittal.

The Court: Yes.

Mr. Emigh: Now, your Honor, I wish to present the other motion I spoke of, the withdrawal of count one from consideration.

The Court: That is overruled.

Mr. Emigh: That is overruled and we ask an exception on that.

The Court: Call in the jury. [348]

Mr. Eickemeyer: Have you copies of them?

Mr. Lamb: You use the word "copies"; I haven't any.

Mr. Emigh: Just as soon as I make the changes.

(Whereupon, the jury returned to the court room.)

The Court: Ladies and gentlemen of the jury, the defendant has rested his case and the arguments of counsel are now in order. Gentlemen, how much time do you all want to argue, all three of you? All three counsel want to argue?

Mr. Leibowitz: No, it has been arranged between the two of them, they are going to argue.

The Court: Well how much time do you think you should have? Can you hear me, Mr. Emigh?

Mr. Emigh: Yes. I was just contemplating the time. I don't think the defendant's case will take more than half an hour, three-quarters of an hour; half an hour will be sufficient.

Mr. Angland: For each of you or together?

Mr. Emigh: Half an hour for the defendant.

Mr. Angland: That is cutting it a little short, your Honor.

The Court: Gentlemen, I have had quite a little bit of experience with counsel and I know how they get strung out in an argument and get going and sometimes it is hard to reach terminal facilities. Don't you think I had better give you at least an hour? I will give you an hour, or [349] I will give you more if you want it. This is an important case and there are a good many things brought out here you may want to discuss. Well, I will give you an hour. I will allow an hour on the side; you can take as much of that time as you need.

Mr. Leibowitz: I might suggest we waive our summation if the plaintiff waive their summation and let the case go in.

The Court: How is that?

Mr. Leibowitz: We are perfectly willing to waive summation if the Government waive their summation and let the case go in as is.

Mr. Lamb: We are perfectly willing to do that

and very pleased to do so and the court may therefore on the reliance on the statement of counsel may charge the jury.

The Court: I didn't quite understand.

Mr. Eickemeyer: We are waiving the argument. The Government is waiving the argument and we are waiving the argument and we will submit the case.

The Court: Without argument?

Mr. Eickemeyer: Without argument.

The Court: On both sides?

Mr. Lamb: That is correct, your Honor.

The Court: Very well, then all that remains to be done as the record may be shown on that is for the court to give its instructions to the Jury. [350]

The Court: Well, ladies and gentlemen, that will enable us to save considerable time and probably enable you to get this case for consideration before dark so that you won't be kept up all night or a part of the night and counsel with you. So in that respect I will proceed.

Mr. Angland: The witnesses may come into the court room now and hear the charge to the jury?

The Court: Yes, they may come in, if they want to come.

The Court: Ladies and gentlemen, as you know, when you have served on juries before, at the conclusion of the evidence in the case and after the arguments of counsel the court delivers its instructions to the jury. Now in this case it is a little different. The court delivers its instructions after

the submission of the evidence and certain motions, which have been presented to the court during your absence from the court room, so that the instructions come in this particular case after the evidence and motions inasmuch as counsel on both sides have waived their arguments.

Now, the instructions, we speak of them as instructions, sometimes they are called the charge to the jury. They are really rules of law that the court deems applicable to a case of this kind. Now you are the sole judges of the facts of the case. You judge the credibility of witnesses, you judge the weight to be given testimony and the weight to be [351] given circumstances, and the court gives you the rules of law that he deems applicable.

Now you will remember during this lengthy voir dire examination by counsel for the defense there were several different propositions of law presented to you. Now if your recollection of the law as given you by counsel when you were thus being examined should vary or differ with the law that is given you by the court, at this time, of course, you will accept the law as given you by the court.

And now I observe another thing and I think it should be balanced and that is the question was also propounded to you on your voir dire examination every one of you, I think, with the exception of two or three cases whether or not you would give the defendant a square deal. Well, of course, you all answered that you would. Now, of course, you would mean also that you would give the Government a

square deal. It is up to you ladies and gentlemen to give both sides a square deal and that means that you will render a verdict according to the evidence you have heard here in this court room and taken in connection with the instructions of the court.

Now this is a case of a felony charge here. It is under 201. Well, in the first place, we will consider the information; simply the document itself. Now this is no evidence at all in this case and shouldn't be considered by you as such. This is merely the formal charge, a form that [352] was handed down by the grand jury and it is for the purpose of acquainting you and the defendant with the nature of the charge and all who are interested here in this trial so that we know what it is about; it is not to be considered as any evidence whatever. Now I am going to read you this because if arguments had been made here some of the counsel would have read the charge to you. This is Count One, Offer of Bribe, under Title 18, 201, United States Code Annotated.

“That on or about the 22nd day of November, 1948, in the state and district of Montana and within the jurisdiction of this Court, Meyer Schneider unlawfully and feloniously promised money to a certain officer and person acting for and on behalf of the United States in an official function, to wit: Harvey B. Apperson, First Lieutenant, United States Air Force and Base Salvage Officer of the Great Falls United States Air Force Base, as the defendant well knew, for the purpose and with the

intent to influence the decision and action of the said Harvey B. Apperson in his official capacity and function, as aforesaid, on a certain matter then pending before him in his official capacity, as the defendant well knew, and for the purpose and with the intent to influence the said Harvey B. Apperson, as aforesaid, to allow and make opportunity for the commission of a fraud on the United States and to induce the said Harvey B. Apperson acting as aforesaid, as the defendant well knew, to do an act in violation [353] of his lawful duty, as the defendant well knew, in respect to the disposal of salvage property of the United States, as aforesaid."

Now that is the first count. Second count. Count number two is bribery. You noted the first one was the offer of a bribe; both separate and distinct offenses. Bribery, Title 18, Section 201:

"That on or about the 23rd day of November, 1948, in the state and district of Montana and within the jurisdiction of this Court, Meyer Schneider unlawfully and feloniously did give a sum of money to wit: One Thousand Five Hundred (\$1500.00) Dollars, to a certain officer and person acting for and on behalf of the United States in an official function, to wit: Harvey B. Apperson, First Lieutenant, United States Air Force and Base Salvage Officer of the Great Falls United States Air Force Base, as the defendant well knew, for the purpose and with the intent to influence the decision and action of the said Harvey B. Apperson in his official

capacity and function, as aforesaid, on a certain matter then pending before him in his official capacity, as the defendant well knew, and for the purpose and with the intent to influence the said Harvey B. Apperson, as aforesaid, to allow and make opportunity for the commission of a fraud on the United States and to induce the said Harvey B. Apperson acting as aforesaid, as the defendant well knew, to do an act in violation of his lawful duty, as the defendant well knew, in respect [354] to the disposal of salvage property of the United States, as aforesaid.”

Now, then, under these two charges you can find the defendant not guilty of one or both of these counts, or you can find him guilty on one or both of the counts, depending upon how you resolve the evidence. Now I will read the statutory provisions here upon which that indictment is drawn so you will have it in mind. This is Section 201 upon which both counts of the indictment are based:

“201. Offer to officer or other person. Whoever promises, offers, or gives any money or thing of value, or makes or tenders any check, order, contract, undertaking, obligation, gratuity, or security for the payment of money or for the delivery or conveyance of anything of value, to any officer or employee or person acting for or on behalf of the United States, or any department or agency thereof, in any official function, under or by authority of any such department or agency or to any officer or person acting for or on behalf of either House of

Congress, or of any committee of either House, or both Houses thereof, with intent to influence his decision or action on any question, matter, cause, or proceeding which may at any time be pending, or which may by law be brought before him in his official capacity, or in his place of trust or profit, or with intent to influence him to commit or aid in committing, or to collude in, or allow, [355] any fraud, or make opportunity for the commission of any fraud, on the United States, or to induce him to do or omit to do any act in violation of his lawful duty, shall be fined not more than three times the amount of such money or value of such thing or imprisoned not more than three years, or both."

Now that, ladies and gentlemen, is the law from which this prosecution is based, and this indictment was directed and handed down by the grand jury.

Now there was another matter to be brought to your attention in connection with this indictment. To this indictment the defendant was arraigned and entered his plea of not guilty. Now under that plea and at the beginning of the trial and all through to the end there arises in law what we call the presumption of innocence, and that means that the defendant is presumed to be innocent of this charge until he is proven guilty beyond a reasonable doubt as that will be defined to you by the court.

Now, ladies and gentlemen, you were selected here on void dire examination after a very searching examination in which everything that seems to

the court might have been of any material interest was gone into to see whether you had any bias or prejudice against this defendant, and you all indicated that you had not, and on a brief examination by the United States Attorney you also indicated that you had no [356] bias or prejudice against the Government, and that you would deal justly and fairly in the consideration of the evidence. You knew nothing about the facts in the case. Some of you have read a year ago or perhaps recently some newspaper story about this case but it was evident from your reply that it left no impression upon your minds whatever and that you came here with free and open minds without any opinion whatever as to the guilt or innocence of the defendant. Now that is a proper state of mind for a juror to be in when they hear the evidence. You hear the evidence in the case and you retire to your jury room and there you discuss it and examine it from every standpoint; what one juror doesn't think of the other will, and in that way you endeavor to the best of your ability to resolve the evidence and decide what you ought to do in the case.

Now you will remember during the questions during your examination that counsel kept inquiring of you whether in regard to the defense of entrapment that is sometimes put up in cases and that was repeated to you time and time again so that the court feels that it is its duty at this time to advise you that there is no defense of entrapment in this case, so that you will forget what was said by

counsel in his examination of you on your voir dire examination, anything in respect to the question of entrapment as a defense here.

Now then as I said before this presumption [357] of innocence follows the defendant; he is clothed with it throughout the trial of the case, and it goes to the jury room for your deliberation and consideration and you are then and there to determine whether notwithstanding the presumption of innocence you believe the defendant has been proven guilty beyond a reasonable doubt. Now having heard and read and reasoned it out, and there have been a great many definitions given, some of them very long; I can remember when I was a young man hearing long-winded instructions given by Judges all on construing reasonable doubt, and after the Judge had gone through it and reading it to the jury I don't suppose the jury could tell what it was all about because I didn't think at that time and I don't think now it was a very fair definition. As a matter of fact, a reasonable doubt is a very simple proposition. The words themselves practically define it. A reasonable doubt, a doubt for which you can find a reason, a good substantial reason based upon the evidence or the lack of evidence or the character of the evidence, as the case might be.

Now, ladies and gentlemen, after you have considered all of the evidence in this case, that which is favorable as well as that which is unfavorable, if you feel that you have an abiding conviction to a moral certainty of the truth of the charge, then

it would be your duty to convict the defendant; but on the other hand after so considering all of the [358] evidence in the case you feel that you have not an abiding conviction to a moral certainty of the truth of the charge, then it would equally be your duty to acquit the defendant. Now you understand that definition, the force and effect of those words, an abiding conviction to a moral certainty. Let's use some other words in that definition, an abiding and a continuing conviction, belief to a moral certainty to a very high degree of probability, and some courts have even gone a little bit beyond that, to a very high degree of probability; so there you have a definition meaning the same as those legal phrases defined. Now, of course, it would be impossible for the Government counsel here to have proven this case beyond any mathematical, to a mathematical certainty, or such certainty required in the sciences, and it is not required, but to be proven beyond a reasonable doubt as the court has defined it to you.

Now then I said a few moments ago you were the sole judges of the facts and the weight to be given circumstances and evidence presented here in the case, and also the credibility of witnesses. You have an opportunity to see the witness as he takes the stand and he is sworn to tell the truth and nothing but the truth; you note his demeanor on the witness stand; you note his manner of testifying, and you note whether he is frank and candid and outspoken and apparently endeavoring to

tell you the truth and all of it, [359] or whether he has a poor memory or speaks in monosyllables or seems to be evasive in avoiding the question of whether he notes some bias or prejudice against somebody in the case, either the defendant or the Government, or whatever it might be. If you note such bias or prejudice on the part of a witness while giving his testimony, you take it into account and discuss it when you go to your jury room and see what weight you will give it.

Now the only office of a witness here in the court room is to tell you the truth, the whole truth and nothing but the truth, and the presumption is that the witness is speaking the truth, but that presumption may be repelled by his manner of testifying, by the character of his testimony or by contradictory evidence, and as to such matters you are the sole judges. If you believe that some witness has deliberately and intentionally testified falsely to some material matter here, you have a right to distrust his testimony. You might after discussing it and considering it decide that you will discard it altogether, or on the other hand, you may say well this is corroborative here and some other witnesses and here are some other circumstances that should be considered as corroborating at least a part of this statement so that then you might say, well, it is partly corroborated, we will accept it in part and reject it in part. But I merely state that to illustrate it all depends upon your judgment for you are the sole judges as to what you will do with the testimony.

Now in a case of this kind the court will instruct you you note sometimes where there are a good many witnesses on one side and none on the other or very few on the other the court gives the instructions that it does not depend, to decide evidence does not depend upon the number of witnesses testifying to a fact or state of facts, one witness, one credible witness, that means a witness in whom you have confidence, a witness whom you believe, is sufficient to prove a given fact or state of facts in this case, so you remember that as an instruction. I might refer to it later on because I have a few written instructions I am going to bring to your notice before I get through.

Now, of course, intent, the intent is always an element, necessary ingredient to be established in a case of this kind. This is a felony case and the jury before they can convict the defendant must find here in this case beyond a reasonable doubt a joint operation of act and intent, or what we call in law criminal negligence. Now criminal negligence in that connection means the doing of an act with a reckless disregard of the consequences, not caring particularly what happened. Now you are unable, of course, any of you to look into the mind of the defendant and determine with what intent he acted if you believe that he acted in accordance with the charge contained in this indictment. But in order to determine that intent you must take into account all of the evidence in the case and all of the circumstances that you have observed during the progress of the trial in con-

nection with the case and the facts of the case and sometimes circumstances are very important and afford very important evidence, and that is for you to say because you judge of the facts and the circumstances the same as you do the testimony of the witness from the witness stand. But you remember in that connection you are to recall the presumption that every sane person is presumed to intend the natural and usual consequences of his own deliberate act. However, the court instructs that as heretofore that you must be satisfied beyond a reasonable doubt of his guilt before you can find him guilty; that is, you must be satisfied beyond a reasonable doubt that he acted, that if he acted at all with a criminal, that is to say, with an evil intent to violate the law.

Now the counsel for the defendant have handed up to the court some special instructions on the case that they requested the court to give, and here is one of them, Instruction No. 1.

You are instructed that a presumption is a deduction which the law expressly directs to be made from particular facts, such is the presumption of innocence in this case which arises from the facts that the Government has charged the defendant with the commission of the offenses alleged in the indictment, and the defendant has pleaded not guilty thereto. Such a presumption may be controverted or overcome by other evidence, but unless so controverted or overcome, the jury are bound to find in accordance with the presumption.

Instruction No. 2 from the defendant. This is on the presumption of innocence which I have already talked to you about.

You are instructed that in every prosecution for a crime or public offense the defendant is presumed to be innocent. You are further instructed that such presumption is not an idle presumption but has the force and effect of evidence and abides with the defendant throughout the trial of the case and during your deliberation and entitles the defendant to an acquittal unless and until after due deliberation you find unanimously that such presumption has been overcome by the Government's evidence and that the Government has established the guilt of the defendant beyond a reasonable doubt.

I am not giving the other instructions.

Now then we come to another very important feature of this case we will continue to consider and that is the fact that the defendant has not taken the stand and testified. The law on that is found in 3481, Title 18 of the United States Codes Annotated. And here is the language of the statute:

"In trial of all persons charged with the commission of offenses against the United States and in all proceedings in courts martial and courts of inquiry in any State, District, Possession or Territory, the person charged shall, at his own request, be a competent witness. His failure to make such request shall not create any presumption against him."

So that would indicate that this is no part of

your deliberations or discussions because the law clothes him with that presumption which we must recognize.

Here are two old stock instructions but notwithstanding what I have already said and I have already covered it in part I am going to read them to you because they are impressive and they are still good.

You are the sole judges of the credibility of all witnesses who have testified in this case and the weight to be given their testimony. A witness is presumed to speak the truth but this presumption may be repelled by the manner in which he testifies, by the nature of his testimony, or by evidence affecting his character for truth, honesty and integrity, or his conduct, or by contradictory evidence. In determining the weight to be given testimony of any witness you have the right to consider the appearance of such witness on the stand, his manner of testifying, his apparent candor or lack of candor, his apparent fairness or lack of fairness, his apparent intelligence or lack of intelligence, his knowledge and means of knowledge of the subject upon which he testifies, together with all the other circumstances appearing in evidence on the trial. And under our law the direct evidence of any witness entitled to full credit is sufficient proof of any fact except in proof of treason, and I have already instructed you that that rule applies in this case.

Now here is another one. You are instructed your

power of judging the effect of the evidence is not arbitrary but is to be exercised with legal discretion and in subordination to the rules of evidence. You are not bound to decide in conformity with the declaration any known facts which do not produce conviction in your minds against less knowledge or against other evidence satisfying your minds.

You are further instructed a witness false in one part of his testimony is to be distrusted in the others. You consider that in connection with the instructions I have already given you on that subject.

You are further instructed that evidence is to be estimated not only by its own intrinsic weight but also according to the evidence which is within the power of one side to produce and of the other to contradict, and, therefore, if the weaker and less satisfactory evidence is offered with the appearance that stronger and more satisfactory evidence is within the power of the party, the evidence offered should be viewed with distrust by you.

Now if you believe any witness who has testified in this case has knowingly or wilfully testified falsely concerning any matter of fact material to the elements of the cause of action herein as defined in these instructions, his or her testimony is to be distrusted by you as to all of the matters or facts as to which he or she testified, which is to be considered in connection with what I have already said to you on that subject.

Now here is something in respect to your delib-

eration in the jury room. The court instructs the jury that this is a felony case. All twelve of your number must agree in order to find a verdict; your verdict must be unanimous. Each juror should decide for himself upon the evidence in the case and upon the law as given you by the court as to what his verdict will be. No juror shall yield his deliberate conscientious convictions as to the guilt or innocence of the defendant either at the instance of the majority of the jury for the sake of equanimity or to prevent a mistrial, but you are further instructed that nothing in this instruction is to be taken to mean that you shall not fully and fairly discuss among yourselves all the evidence and the facts surrounding this case as disclosed by the evidence or that any of your members shall not be open to conviction by honest argument by any member or members of the jury founded upon the evidence produced upon the trial or upon the law as given to you by the court.

Now again you may not arbitrarily and capriciously disregard testimony of a witness who is not impeached in any of the usual modes known to the law but whose testimony is reasonable and consistent with all the circumstances proved bearing upon the material issues involved in this case. Reference was made in regard to impeachment of a witness. Now the usual modes of impeachment of a witness known to the law as mentioned in the preceding instruction are, first, by proving contradictory statements previously made by the witness

as to matters relevant to his testimony in the case, or by disproving facts testified to, or by evidence as to his general bad character; but whether a witness has been impeached is solely for the jury to determine from all the evidence in the case.

Now this is in respect to claimed statements and oral admissions. Testimony as to what this one or that one said as to witnesses who have been witnesses in the case. You are instructed that the evidence of claimed statements and oral admissions of a party ought to be viewed with caution. It sometimes happens that the witness testifying to such statements or admissions by unintentionally altering a few words or expressions really used gives an effect to the statement at variance with what the speaker actually did say, but when such verbal statements are precisely given and identified by intelligent and reliable witnesses they are often entitled to great weight.

Well here is another one on the indictment. I have already told you about this but this is very well and concisely stated. The indictment in this case is only a formal written accusation of the crime required by law as an essential preliminary to a trial but in itself it is not any evidence of the commission of the offense therein set forth by the defendants or either of them. It is merely a formal charge for the purpose of putting the defendants upon trial and should not in any manner influence you in arriving at your verdict, nor should it be allowed in any way to prejudice you against the defendants in this case.

Now, gentlemen, here is something that the court should make a statement on. You have noticed some colloquies and disputes between counsel and between the court and counsel during the progress of this trial. Now you will not be influenced by colloquies or disputes during the trial between counsel or between counsel and the court or between the court and counsel, or counsel and the witnesses, or remarks or statements, or any remark or statement not based upon the evidence. You will base your verdict solely upon the evidence submitted to you and wholly disregard the remarks of counsel not bearing upon the evidence, and wholly disregard anything you may have heard or read outside of the evidence, and any evidence erroneously submitted and afterwards excluded you will also disregard. Now that also refers to anything you may have heard about this case or read about it on the outside at any time or during the progress of this trial. You are to dismiss it wholly from your minds and make up your minds as to what your decision will be from a discussion of the evidence here and discussion of the exhibits that have been introduced in evidence in this case which you may wish to read and consider and further discuss. Now the case is based upon that, and that solely, the evidence presented here and the exhibits presented here.

Now sometimes you find a conflict in the testimony. Here the testimony is all on one side, all furnished here by the Government, and you might find conflicts in the testimony of this witness or

that witness. You might think that this witness or that witness has contradicted himself in some way and you have to consider that; that is a part of your duty, of course, and say, well, now, which is better; what weight shall I give to this man's testimony and what weight to the other one, and is there contradiction there. And upon discussing it you may find there is some way of reconciling it, and, of course, it is your duty, wherever you can, to reconcile the testimony presented to you and not put yourselves in opposition to it; discuss it freely and fairly and come to a reasonable conclusion if you possibly can. However, sometimes you find irreconcilable conflicts in the testimony, and when you do why, of course, you must then take the testimony that you believe to be worthy of your consideration and then give it such weight as you think it ought properly to receive.

Now the court has observed that you have given very close attention to the evidence in this case. I know that you all sincerely and conscientiously intend to do your full duty and resolve all the evidence that has been submitted to you consisting of the oral testimony and exhibits to the very best of your ability, and if you find that the defendant is guilty of the crime charged against him beyond a reasonable doubt, then it is your duty to convict him; if, on the other hand, after discussing it freely and fairly you resolve the evidence in favor of the defendant and you believe that the Government has not proved his guilt beyond a reasonable doubt,

then it would equally be your duty to acquit him.

Now the court sometimes comments on the evidence in the case but the court is not going to comment on the evidence in this case. You are the sole judges of the facts here; it all came out very plainly, and the court has tried to instruct you in the plainest language as to the rules of law that you were to consider and remember in applying it to the evidence, but the court always held the jury are the soles judges of the facts and they can do as they please about accepting any comments the court might make.

So it will take twelve of your number to agree on a verdict and when you retire you should select one of your number to act as foreman and he will sign the verdict when you agree. Now you may retire.

The Court: The baliffs are all sworn?

The Clerk: The baliffs who were sworn are not here.

The Court: All right.

(Whereupon the baliffs were duly sworn by the Clerk.)

The Court: Now counsel for the defense you can come forward here and make your exceptions to the instructions of the court to the court reporter without the hearing of the jury but while the jury are sitting here, and we will both look into what is going on, the Government as well.

Mr. Emigh: Comes now the defendant, Meyer

Schneider, and objects and excepts to the charge of the court, charge and instructions of the court to the jury on the following grounds.

First. That the court in its first instruction to the jury in respecting the defense of entrapment stated first as to matters concerning the defense of entrapment and then proceeded to tell the jury that the law as stated by counsel on his examination of the jury was not the law that would be given by the court.

The Court: I didn't state that.

Mr. Emigh: Without limiting it to the entrapment, the question of entrapment.

The Court: No. I stated if their recollection of the propositions of law stated by counsel in its examination of the jury on voir dire examination did not accord with the law as given by the court to the jury, they should disregard what he says about it.

Mr. Emigh: Well I might be mistaken about it, but I want to reserve it anyway.

The Court: You are mistaken anyway.

Mr. Emigh: Further, that the court in defining moral certainty defined it in the alternative and explained to the jury in the alternative that moral certainty——

The Court: No, I didn't say alternative. I defined the meaning of the words used in my definition.

Mr. Emigh: And in giving synonymal definitions that it was a degree of very, a very high degree of probability.

The Court: And even a higher degree than that.

Mr. Emigh: I think the words used by the court
“a very high degree of probability.”

The Court: A very very high degree of probability.

Mr. Emigh: And that is excepted to.

The Court: Why don't you show what I actually did say?

Mr. Emigh: Because no degree——

The Court: Let the record show I said a very, very high degree of probability.

Mr. Emigh: Well, add another “very” on then.

The Court: Put in two.

Mr. Emigh: I don't want to mis-quote the court. That no degree of probability however high can take the place of moral certainty.

And that the court's instructions as to the one party to the action producing a large number of witnesses or a greater number of witnesses than the other is not applicable in this case in that the defendant has not taken the stand or produced witnesses and the defendant's case rests upon the presumption of innocence and the failure if any of the Government to establish his case beyond a reasonable doubt.

That the instructions of the court are erroneous in defining in this case as one element of a crime criminal negligence and then in turn defining criminal negligence because the gist and substance of this case is intent and the acts or those charged to have been done must have been done intention-

ally and no question of criminal negligence can be considered by the court in relation thereto as intent is a material part of the charge.

The instructions of the court are misleading in this respect, that though the jury were told the law, abstract statutory law on the failure of the defendant to take the stand and that they could not consider that matter, nevertheless, the court in its instructions did tell the jury that they could take all facts and circumstances surrounding the case into consideration without excepting expressly therefrom the fact that the defendant did not take the stand.

Further, the defendant excepts to the refusal of the court to give instruction No. 3 as presented by the defendant in relation to the defense of entrapment.

And, further, the defendant excepts to the ruling of the court to give instruction No. 4 proposed by the defendant as to bias or prejudice of witnesses.

And, likewise, to give either in substance or effect instruction No. 5 proposed by the defendant relating to the failure of defendant to testify, and in lieu thereof giving the statutory definition, the statutory provisions relating thereto and the presumptions which must not be deduced therefrom, and without further cautioning the jury as requested in instruction No. 5 that it must not discuss, that the fact the defendant did not take the stand must not enter into their discussions or deliberations.

The Court: I did instruct them on that on read-

ing the statutory provisions that they must not consider it in their deliberations at all. Put that in the record, would you?

Mr. Angland: The Government has one point.

Mr. Emigh: That is all.

The Court: What about the Government?

Mr. Lamb: The Government does not except to any of the court's instructions, but at this time wishes the record to show that copies of the proposed instructions given to the court were not served upon the United States Attorney as required by the provisions of Rule 30 of the Criminal Rules of Federal Procedure; and that the United States Attorney does not at this time have copies of the complained of instructions nor had such copies been served upon the United States Attorney prior to the giving of those instructions and the action of the court upon those proposed instructions.

Mr. Emigh: Your Honor, may I add one exception that I overlooked?

The Court: All right.

Mr. Emigh: And that is this, your Honor; that in relation to the instructions of defendant given by the court the court indicated those to be the instructions tendered by the defendant and thereby limited their force and effect as instructions of the court.

The Court: All right.

Mr. Emigh: Let the record show we are handing herewith to the District Attorney the copies of the requested instructions.

The Court: Yes, after the case is over with.

The Court: The jury may retire.

Mr. Angland: You haven't discharged the alternate jurors.

The Court: Oh, yes, the alternate jurors are discharged. The other jurors seem to be in good health and you may be discharged from further attendance at this term and go to the Clerk's office for your settlement at this time with the Government, the two alternate jurors.

(3:15 o'clock p.m. December 15, 1949, court recessed.)

(Court resumed, pursuant to recess, at 5:00 o'clock on December 15, 1949, at which time the jury, defendant and all counsel were present.)

The Court: Ladies and gentlemen, have you agreed on a verdict?

Mr. Duncan (Foreman): We have, your Honor.

(Whereupon the baliff transmitted the papers from the Foreman of the jury to the court.)

The Court: The Clerk can read and record the verdict.

The Clerk: Your verdict, ladies and gentlemen:

In the District Court of the United States,
District of Montana, Great Falls Division

Criminal No. 8088

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MEYER SCHNEIDER,

Defendant.

We, the jury, in the above-entitled cause find the defendant guilty in manner and form as charged in the indictment on file herein.

CLAUDE K. DUNCAN,

Foreman.

The Clerk: Is that your verdict as read so say you all?

(Whereupon the jurors replied in the affirmative.)

The Court: Do you desire to poll the jury?

Mr. Emigh: Please, your Honor.

The Court: Poll the jury.

(Whereupon the Clerk polled the jurors individually.)

The Clerk: All answered in the affirmative, your Honor.

The Court: Well, ladies and gentlemen of the

jury, now that it is all over, I don't see how you could have found any other verdict, and yet I feel that the court very conscientiously instructed you as to your duties on all relevant matters and everything pertaining to the case. You are now being excused from further consideration of the case and also for the term. We have had a few other cases for trial but they have all gone off one way or another so that the jury term ends with this case and you may retire to the Clerk's office to make your settlement with the Court.

The Court: The defendant may stand up. The defendant is charged by a grand jury with the crime of offering a bribe and giving a bribe in two counts of the indictment found by the grand jury, and he came into court and was arraigned and pleaded not guilty, and has been tried by a jury, and the jury after deliberation returned into court finding the defendant guilty. Have you got any reason to give now why the sentence, the judgment of the court should not be pronounced in accordance with that verdict?

Mr. Emigh: Your Honor, would the court continue the matter of sentencing until some convenient time tomorrow, in the forenoon if convenient to the court?

The Court: We have been going over this matters and looked into it very carefully and the law is very clear and there is no reason the case shouldn't be over with tonight. There is no reason

that the sentence should be postponed. Have you any other reason? Have you anything to say?

Mr. Emigh: That is the only——

The Court: As to whether sentence should not be pronounced in accordance with the verdict of the jury?

Mr. Emigh: That is the only reason at the moment, your Honor.

The Court: Has the defendant anything to say?

Defendant Schneider: No, sir.

The Court: Would you like to say anything?

Mr. Eickemeyer: No, your Honor.

The Court: In regard to the matter?

Mr. Eickemeyer: No, sir.

The Court: Why judgment and sentence should not be pronounced in accordance with the verdict of the jury?

Mr. Eickemeyer: No, sir.

The Court: Have you got the indictment there?

The Court: On the indictment as a whole it is ordered and adjudged that the defendant in accordance with the penalty prescribed by statute be sentenced to pay a fine of three times the amount involved in the bribe, to wit: \$1500.00 or three times that amount, and serve a term of one year and six months. That is all. And he is remanded to the custody of the Attorney General and by him delivered to the proper authorities to see that the sentence is carried into effect.

Mr. Emigh: Your Honor, may I inform the court we would on tomorrow file motions in arrest

of judgment and for a new trial. I was asked to make arrangements for appeal and would ask that the defendant be permitted his liberty on the bond that is now posted in the sum of \$5,000. or such further sum as the court deems proper in the premises.

The Court: What bond?

Mr. Emigh: \$5,000, your Honor.

The Court: What does the United States Attorney have to say about that?

Mr. Lamb: Your Honor, it would depend; if it was a surety bond, it would depend to a great extent upon that bond. I am not sure it extends beyond the moment of his conviction.

Mr. Emigh: I would ask a stay of execution so [380] that the bond—we would ask the stay of execution.

Mr. Leibowitz: Your Honor, we made arrangements with National Surety Company in New York in the event of conviction here and they consented to write the bond, or Mr. Frary did.

The Court: Well it is in very general terms here. I am not familiar with this kind of a bond. Well I am inclined to continue his bond, however. Suppose you read it and see how you interpret it.

Mr. Angland: Your Honor, doesn't a bond in a case of this kind become exonerated at the time the verdict of the jury is returned and sentence imposed, and a rider might be attached to this bond that would make it continue in force, but it has been my understanding a bond is exonerated when a defend-

ant is in court and the sentence of the court is imposed pursuant to the verdict.

Mr. Liebowitz: Your Honor, in communication with New York City about the posting of bond I think that the bond is good, and we arranged an appeal bond which will probably be here tomorrow, and for all I know it may be here and authority given to the man here to execute such a bond.

The Court: Do I understand you propose to take an appeal? That is your first move?

Mr. Emigh: That is the purpose of making the record that is required. [381]

Mr. Leibowitz: We shall have the bond here. I will give the court all assurances this man won't run away. He has been responsive. He came here two or three times and I came along and I can assure you the man will be right here tomorrow.

The Court: Are you going to take your appeal tomorrow and effect all papers tomorrow?

Mr. Emigh: I doubt that it will be possible but we will do it as expeditiously as we can.

Mr. Leibowitz: I will assure the court the bond will be here tomorrow; it may be here already.

The Court: Well I will grant the stay until tomorrow morning at 10:00; and if it isn't here, I will not continue it on this bond.

Mr. Leibowitz: I will have it here tomorrow morning.

Mr. Emigh: Now, your Honor, may I ask you if the court is familiar with the essentials of all the motions that have been made; they have been before

the court and I doubt that anything will be added to them, and probably will be disposed of very promptly. Will the court at this time disclose the amount of the appeal bond so we can make arrangements?

Mr. Emigh: We take exception to the verdict.

The Court: I think he should give an appeal bond [382] of at least \$10,000. Very well, court will stand adjourned until tomorrow morning at 10:00 o'clock. Ladies and gentlemen, you are excused with the thanks of the court.

(5:15 o'clock P.M. December 15, 1949.)

In the District Court of the United States
in and for the District of Montana

United States of America
State of Montana—ss.

I, Sidney O. Smith, do hereby certify that I am the Official Court Reporter in the above-entitled court; that the foregoing and annexed transcript constitutes a full, true and correct transcription of the proceedings had and the testimony taken, which was recorded in phonography and transcribed in longhand by me, in Criminal Cause No. 8088, United States of America, Plaintiff, vs. Meyer Schneider, Defendant.

Dated this 14th day of January, 1950.

/s/ SIDNEY O. SMITH,

Official Court Reporter. [384]

United States of America
District of Montana—ss.

I, H. H. Walker, Clerk of the United States District Court in and for the District of Montana, do hereby certify that the annexed and foregoing is a true and correct copy of the Reporter's Transcript of Proceedings had at the trial of Criminal Action No. 8088, United States vs. Meyer Schneider, as appears from the original file and records of said case in said Court, and now remaining in my custody as such Clerk.

I further certify that the costs of certifying the annexed Transcript amount to the sum of \$38.30 and have been paid by the appellant.

Witness my hand and the seal of said Court at Great Falls, Montana this April 6, 1950.

H. H. WALKER,
Clerk.

[Seal] By /s/ ELIZABETH C. McKEE,
Deputy.

[Endorsed]: Filed January 16, 1950.

[Endorsed]: No. 12501. United States Court of Appeals for the Ninth Circuit. Meyer Schneider, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the District of Montana. Filed March 16, 1950.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

STATEMENT OF POINTS

1. The Judgment should be reversed and the indictment dismissed because the indictment fails to state the essential facts constituting the statutory offense of bribery.

2. The Judgment should be reversed and the indictment dismissed because the indictment in alleging the bribery of a "certain officer and person acting for and on behalf of the United States in an official function" in both counts fails to describe the duties or official function of such person and the indictment is therefore defective as a matter of law.

3. Under the statute only one offense can be committed and therefore the indictment is defective as a matter of law.

4. There is an inconsistency between the heading of Count 1 of the indictment and the body thereof rendering that count defective as a matter of law.

5. The Judgment should be reversed and the indictment dismissed on the ground that the evidence compelled a judgment of acquittal for the record discloses that Lt. Apperson had no authority or official duty in connection with the sale of Government surplus property.

6. The Judgment should be reversed and the indictment dismissed on the ground that there was insufficient evidence to establish beyond a reasonable doubt that this defendant committed the acts charged in both counts of the indictment.

7. The Judgment should be reversed and the indictment dismissed on the ground that the court erred in denying the motion for a judgment of acquittal for it affirmatively appears from the evidence herein that the officers of the United States induced, enticed, persuaded and by representation lured the defendant to commit the acts charged in both counts of the indictment.

8. In any event, the Court committed reversible error in withdrawing the issue of entrapment from the jury for the record is abundantly clear that issues of fact on the defense existed requiring its submission to the jury for their consideration.

9. It was reversible error for the Court to deny defendant's Counsel permission to examine the records of the Federal Bureau of Investigation at the time of the cross-examination of the witness Matthews.

10. It was prejudicial error for the Court to deny defendant's request to empanel a new jury when a prospective juror on the voir dire in the presence of the entire panel stated he admired Lt. Apperson.

11. The Court's refusal to permit complete interrogation of the Witness Apperson with reference to telephone calls impeded the emergence and development of proof vital to the defense and was reversible error.

12. There is a fatal variance between the indictment and the proof in that both counts of the indictment state that the person sought to be influenced in an official function is "Harvey B. Apperson, First Lieutenant, United States Air Force and Base Salvage Officer of the Great Falls United States Air Force Base" whereas the competent proof does not bear out the indictment in this respect.

[Endorsed]: Filed June 22, 1950.